

March 13. 1776.

A N S W E R S

F O R

HUGH DALRYMPLE of Fordell, Esq;

T O

The PETITION of John Henderson younger of Fordell, Esq; and others, Freeholders in the county of Fife.

UPON the 6th of May 1766, the respondent obtained a wadset-right from Mr Wemyss of Wemyss, of the lands of Powgild and Glenningston.

This wadset was constituted, as is now commonly practised, by an unilateral deed. It begins thus. "I James Wemyss of Wemyss, Esq; superior of the lands and others underwritten: Whereas Hugh Dalrymple of Fordell, Esq; has made payment to me of the sum of L. 20 Sterling for my granting these presents, whereof I hereby grant the receipt, renouncing all exceptions and objections in the contrary; therefore wit ye me to have sold, annailzied, and disponed, as I, by these presents, sell, annailzie, and dispone, to and in favour of the said Hugh Dalrymple, his heirs and assignees, heritably but redeemable, always and under reversion, in manner after mentioned, all and hail the lands of Powgild and Glenningston," &c. After this follows the procuratory of resignation for resigning the lands in the hands of his Majesty, in favour and for new infeftment to be granted to the respondent, "heritably but redeemable always and under reversion," as follows, viz. "Providing always, as it is hereby expressly agreed upon, that the

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“ lands and others above disposed shall be redeemable by me, my
 “ heirs and successors, from the said Hugh Dalrymple and his fore-
 “ saids, at the term of Whitsunday 1770 years, or at any other
 “ term of Whitsunday thereafter, by payment making to them,
 “ or consignation for their behoof, of the sum of L. 20 Sterling,
 “ upon premonition to be made to them forty days preceding
 “ the term of redemption, personally, or at their dwelling-pla-
 “ ces, in presence of a notary and witnesses, as effects; and in
 “ case of absence, or refusal, the redemption-money to be con-
 “ signed in the hands of the cashier of the Royal Bank, or trea-
 “ surer of the Bank of Scotland, upon the peril of the consigner;
 “ and the place of redemption to be within St Giles’s church, at
 “ that place where the Earl of Moray’s tomb is situated; and an
 “ extract of these presents, or of the infestment to follow here-
 “ upon, shall be as good, valid, and sufficient, for using the or-
 “ der of redemption, as if a particular reversion were granted on
 “ a paper apart, with all solemnities necessary.”

The deed next contains a clause of-warrantice, with an excep-
 tion therefrom of the feu-rights granted by Mr Wemyss, his pre-
 decessors, or authors; after which it proceeds as follows. “ And
 “ farther, I by these presents not only assign, transfer, and dis-
 “ pone, to the said Hugh Dalrymple and his forefaids, the whole
 “ writs, rights, titles, and securities, of and concerning the lands
 “ and others above disposed, but also the feu-duties and other
 “ casualties of superiority payable forth of the said lands from
 “ and after the term of Whitsunday next to come, and in all
 “ time coming, during the not redemption, as aforesaid.”

In consequence of this disposition, and a resignation following
 thereon, the respondent obtained a charter from the crown, dated
 the 3d, and sealed the 31st of July 1766; and in virtue of the
 precept contained in that charter he was infest upon the 21st of
 August; and his seisin was recorded upon the 20th of September
 1766.

The respondent claimed to be inrolled as a freeholder of the
 county of Fife at Martinmas 1767; and for that purpose produced
 his charter and seisin, together with a certificate, that the lands
 were valued in the cess-books at L. 888 Scots. But it having been
 objected, That he had not produced the disposition upon which
 the charter did proceed, from which alone it could appear, whe-
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ther his right was of the nature of a proper or improper wadset, the meeting refused to inroll him.

This judgement of the freeholders was clearly erroneous. In a question of inrolment it is not necessary to produce the warrant of the charter: it is sufficient to produce the investiture, by which the claimant is established to be the vassal of the crown. However, as his inrolment at that time was a matter that could be attended with no consequences; so he did not incline to be at the trouble and expence of complaining to your Lordships of the judgement of the freeholders; as there could be no doubt that he might claim again to be inrolled at any subsequent meeting, and that he could then remove scruples which they then appeared to entertain, by production of the disposition. But as the political situation of the county rendered it of little consequence, he did not think of renewing his claim, till lately, when a vacancy having happened, by the death of the late representative, several candidates offered their services to the county.

The respondent being attached to one of these candidates, resolved to prosecute his right; and accordingly appeared at the day of election, and produced his titles in order to be inrolled; when a new and unexpected objection was stated to his claim, viz. That the disposition from Mr Wemyss was not a proper wadset, but only a redeemable right, which was reprobated by the act of the 12th of Queen Anne. To this objection an answer was made that was satisfactory to a majority of the meeting; and the respondent was inrolled accordingly.

Against this judgement of the freeholders, the petitioners preferred a complaint to your Lordships; which was followed with answers, replies, and duplies. In these papers the petitioners insisted upon the objection that had been stated at the meeting of the freeholders, viz. That the respondent's right was not a proper wadset; and, in the replies, the petitioners, for the first time, stirred a new objection, but which seems to be given up in this petition, viz. That the disposition produced by him, was not a warrant for the charter, as the disposition suspended the redemption till Whitsunday 1770; whereas, by the charter, it was suspended till Whitsunday 1777: and when the cause came to be advised, a new objection was stated from the bar, which had not formerly occurred to the petitioners counsel, viz. That the seisin was null. And your Lordships, of this date, pronounced the fol-
Mar. 7. 1776.
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lowing interlocutor. " The Lords having considered this petition and complaint, with the answers, replies, and duplies, they repel the objections, and dismiss the complaint; and decern."

The petitioners have reclaimed against this interlocutor. The petition is ordained to be seen and answered; and, in obedience thereto, this is humbly offered on behalf of the respondent: and after all that has been said in the petition, he is humbly confident, that, upon reconsidering the case, your Lordships will have no difficulty in affirming the interlocutor.

The first point insisted upon in the petition is, That the respondent had no right to be admitted on the roll of freeholders on account of the nature of his right.

This objection is founded upon the statute of the 12th of Queen Anne; by which it is enacted, " That no infeftment taken up on any redeemable right whatever, except proper wadsets, adjudications, or apprisings, allowed by the act 1681, shall intitle the person so infeft to vote, or be elected," &c. The petitioners say, that it will be incumbent upon the respondent, in order to support his claim, to show, either that his right is a proper wadset, or that other redeemable rights do, under this statute, intitle to vote; that the respondent seemed to be at a loss which of these grounds to take up; that he sometimes appeared to aim at establishing the former, and sometimes the latter proposition.

But the petitioners are very much mistaken in supposing, that the respondent was under any difficulty in taking up his ground in this case. He neither was nor could be under any puzzle in that respect; as the two pleas are perfectly consistent, and hang extremely well together; nor does his insisting upon the one ground in the least hurt his plea, as endeavoured to be supported upon the other. He humbly purposes to maintain, *1mo*, That the right in question is to all intents and purposes a proper wadset; and, *2do, et separatim*, That a sale *sub pacto de retrovendendo*, where the disponent is intitled to the full use and possession of the lands during the subsistence of the rights, without accounting, is not struck at by the statute of the 12th of Queen Anne: and if he is successful in establishing either of these propositions, the objection of course will fall to be repelled.

The exception taken to the right in question is, That a wadset is an impignoration of lands, in security of a sum of money lent:
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the reverser is debtor, the wadsetter creditor, and, like any other creditor, must have a right to redemand payment of his money if he incline: whereas, in a sale, a price is paid; the lands are not given in security, but conveyed in property: and that, with respect to the present right, there is not a single word in it that can import a loan of money, or an impignoration of lands; and that it is impossible to figure a sale under reversion conceived in any other form.

But it would be attended with dangerous consequences to the lieges in general, if the rights of parties were to depend upon criticisms and niceties in point of language. The law hath pointed out no *verba solennia*, as essential or indispensably necessary in the constitution of a wadset; and therefore, in judging whether the present right is a proper wadset or not, your Lordships will attend to the nature of the right that is established, and not to the words that have been used in constituting it. There is no charm in the word *wadset*; it is not the writer's saying that it is a proper wadset that will make it so; but whether it is so or not, must depend upon the nature of the deed itself, and whether the right that is thereby created in the grantee is really of the nature of a proper wadset or not. The respondent apprehends, that it is by no means essential to the constitution of a wadset, that the creditor should have the power to call for his money; and accordingly, in practice, so far was a clause of requisition from being thought essential to the constitution of a wadset, that in ancient times it was seldom or never inserted. Numberless were the wadsets in Scotland in former times, and yet the respondents believe, that the petitioners will find it a difficult matter to point out any old wadset containing a clause of requisition. Clauses of requisition, whether they shall be considered as essential or not, do not belong more to a proper than to an improper wadset, or any other right of the like nature: and in order to satisfy your Lordships, that such clauses were not considered as essential to the constitution of a right over lands in security of a loan of money, it is only necessary to observe, that the old infeftments of annualrents contained no clause of requisition; so that unless the debtor chose to redeem, the right behoved to subsist for ever.

It is from the ancient practice alone that this matter can be investigated. A proper wadset is a security that is now never thought of. No debtor chuses that his creditor should get any more than

his neat principal sum and interest; nor is there any reason why he should: and therefore a different mode of security has been invented, where, at the same time that the debtor is intitled to redeem, the creditor is intitled to demand his payment when he thinks fit. Proper wadsets have been only introduced of late years, for political purposes; but the respondents can appeal to the practice, and which has been very extensive, that of those numerous wadsets that have been created, the bulk of them contain no clause of requisition, but are conceived precisely in the form of the right now in question, without the word *wadset* being so much as mentioned within the four corners of the deeds, or without containing any other clause denoting them to be proper wadsets, than what occurs in this case.

The petitioners controvert the practice in this case, and appeal to one of the wadsets lately granted in a northern county, which contains *in gremio* a clause of requisition. But the respondent could produce numbers of instances to the contrary; and, during the short time he has had to prepare these answers, he condescends upon the following, which are conceived precisely in the same terms with the right now in dispute, viz. Patrick Duff, writer to the signet; Alexander Duff, third son of the late Earl Fife; John Innes, eldest son of Innes of Muirysfauld; Patrick Stuart, son to Lessmurdie; Sir James Colquhoun, in the county of Elgin; Alex. Stuart of Edinglassie, Captain John Gordon of Johnstrees, George Williamson of Wester Fintrie, John Lawson of Westertown, Capt. James Abercrombie of the 3d regiment, Alexander Henry merchant in Banff, John Duncan of Balchars, Alexander Adamson of Nethermill, William Leslie younger of Balnakeith, and Sir John Dalrymple of Coupland, in Mid-Lothian; and it is remarkable, that Sir John's charter was expedited by Mr Stuart, the complainer's grandfather, whom the petitioner surely will not dispute was abundantly intelligent in his profession.

The petitioner seems to consider it as implied in a wadset, that the creditor is intitled to require his money, although it contains no special clause of requisition.

Supposing the law to stand so, it would afford no objection to the respondent's qualification; because, if such a right was implied in the nature of a wadset, although not expressed, the same behoved likewise to be competent to the respondent, whose right is conceived in the usual form with other wadset-rights.

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At the same time the respondent does humbly beg leave to controvert what is here assumed by the petitioners. He apprehends, that where the wadset-right contains no clause of requisition, the creditor is not intitled to demand payment of his money. Of old, wadsetters got too beneficial bargains to think of parting with the possession, and calling back their money; and, when getting a beneficial bargain, it was thought no hardship, that the creditor should not have it in his power to harass the debtor, but that the money should remain secured upon the lands as long as the reverser chused to allow him to retain the possession.

The respondent, therefore, holds it to be a clear case, that it is not at all necessary to the constitution of a wadset, that the wadsetter should have it in his power to call for his money. So it was determined by your Lordships upon the 17th January 1755, Galbraith contra Cuningham. Neither is it of any moment, what form of words are used in constituting the right, whether the lands are *wadsetted and disposed*, or if they are *sold, annailzied, and disposed*; which are the words generally used. The distinguishing characteristic of a proper wadset consists in this, that the fruits and profits of the subject are given in lieu of the interest of the money; and the hazard and benefit thereof, whether it rise or fall, is the wadsetter's. The essence of the right does truly consist in being interim proprietor of the subjects; of being intitled to apply the whole issues and profits thereof to his own benefit, without accounting therefor to any mortal.

The description given of a proper wadset by Sir Thomas Craig, Lib. 2. dig. 6. is in these words: "Apud Normannos mortuum gagium illud § 27.

"est quod jurisconfulti *aristoxenus* vocant; nempe, ut uni usus pecuniæ, alteri ipsius rei competat: quo casu fructus non imputantur, neque qui pignus accepit, eorum nomine tenetur, aut de iis rationem reddere: quod cum nostris alienationibus, quæ *oppignerationes*, five *wadsettis*, dicuntur, sub pacto de retrovendendo, five reversione, maxime convenit; nam is cui res opigneratur, investitur, eodem fere modo (licet sub pacto de retrovendendo) quo si pure factus esset." Here he explains a wadset to be in reality an alienation *sub pacto de retrovendendo*.

In like manner, Sir George Mackenzie describes a wadset as Infl. 1. 2. tit. 8. follows. "A wadset is a right whereby lands are impignorated § 3.

"or pledged for security of a special sum, which passes by inheritance, like other real rights, in the terms of alienation or disposition;

“ position; and the disponent does secure himself by getting a
 “ reversion from the buyer; wherein he grants and declares the
 “ lands redeemable from him, upon payment of the sum then
 “ delivered, and of the annualrent thereof, which is *pactum de*
 “ *retrovendendo*; and expresses the place and time when and where
 “ it is to be delivered, and in whose hands it is to be consigned,
 “ in case the receiver of the wadset refuse to accept his money.
 “ Reversions may be either granted by a paper apart, or they
 “ may be contained in the body of the right, and are there said to
 “ be incorporated *in gremio juris*.” And in § 11. he says,
 “ Wadsets are either proper or improper. Proper wadsets are
 “ those wherein the wadsetter takes his hazard of the rents of
 “ the lands, for the satisfaction of his annualrent, and pays him-
 “ self all public burdens.” It is plain, that this learned author
 did not consider a power in the creditor to call for his money as
 in any respect necessary to the constitution of a wadset. It is ne-
 ver so much as mentioned by him as any of the component parts
 of a wadset; but he points out a proper wadset to be, where the
 wadsetter has the full use and enjoyment of the lands in lieu of
 the interest of his money.

Lib. 2. tit. 10. § 2. Lord Stair's idea of this matter is very clearly expressed in the
 following passage. “ As to the constitution of a wadset, it must
 “ be according to the thing or right impignorate; for a tack or
 “ liferent, or an assignation to these, or any other cessible right,
 “ may be given in wadset for security, and under reversion; but
 “ *the ordinary wadset is by infestment of property, or of annualrent;*
 “ *the conception whereof is not under the name of impledging, impigno-*
 “ *ration, hypothecation, or the like; but in the terms of disposition or*
 “ *infestment; whereby the property of the thing wadset passeth, and is*
 “ *established in the wadsetter, but under reversion to the constituent;*
 “ *whereby it hath two parts, the infestment, and the reversion.* The
 “ infestment in wadsets is in all points like to other infestments,
 “ whether they be infestments of property or of annualrent, or
 “ whether they be public, holden of the constituent's superior, or
 “ base, holden of the granter himself: so that all the specialties
 “ of wadsets resolve in the reversion.”

Here is an authority as express as could well be conceived; and
 it clearly shows, that the right now in question is, in the con-
 struction of law, a proper wadset. The learned author sets forth
 in as many words, That the name of impledging, &c. is not used
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in the constitution of the right, but that it is conceived in the terms of a disposition of the property, but under reversion, to the constituent. He says, that a wadset hath two parts; the infestment, and the reversion; and that all the specialties of wadsets resolve in the reversion: but it is not so much as insinuated by any of the learned authors, that a third part, viz. a power given to the wadsetter to call for his money, was essential in the constitution of the right. This being the case, it does not seem to admit of a doubt, that the right in dispute to all intents and purposes falls to be considered as a proper wadset. It does not want any one of the requisites which the writers upon our law have pointed out as essential in the constitution of the right.

The petitioners say, That the right of reversion, and the holding the rents without accounting, are not sufficient to denote the right to be a proper wadset: That though these are characters of a proper wadset; yet they are not distinguishing characters of it: That there are other redeemable rights, where the rents are levied, without an obligation to account: That a disposition of lands redeemable upon payment of a rose-noble is one; and that the same is also the case of a proper sale under reversion.

But there is this material difference betwixt the present and that of a right redeemable upon payment of a rose-noble, that the last is a mere gratuitous right, defeasible at the pleasure of the grantor, without payment of any thing but a mere elusory sum; which in reality was nothing but a matter of mere form; but which, agreeable to the ideas of former times, was thought more consonant to feudal principles, for the purpose of denuding the person that was nominally vested in the feudal right of the lands: whereas in the present case a sum of money was advanced for procuring the right; and the respondent is intitled, not only to the full use and possession of the estate during the subsistence of the right, but he cannot be denuded but upon receiving payment of the sum which was advanced by him for procuring the right.

And with respect to a proper sale *sub pacto de retrovendendo*, the respondent will by and by maintain, and he hopes to your Lordships satisfaction, that a proper sale *sub pacto de retrovendendo*, is not struck at by the statute of the 12th of Queen Anne; but that, in the sense of that statute, as well as of the statute 1681, it falls to be considered in the same light as a proper wadset.

At the same time a very material difference does occur betwixt
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this case, and that of a proper sale *sub pacto de retrovendendo*, viz. That the reversion in this case is perpetual; the faculty of redemption can never be foreclosed; but it must be competent to the reverser, whenever he inclines to redeem the lands, upon payment of the sum stipulated by the clause of redemption; whereas, in the case of a proper sale, the right of redemption must be limited to a particular term.

This is a very proper criterion by which to distinguish a proper sale *sub pacto de retrovendendo*, from a proper wadset. The intention of a sale is, to transfer the right from the seller to the purchaser: and although it may not be inconsistent with the nature of that contract, that the right should be kept in dependence for a limited time; yet it is perfectly absurd, and altogether inconsistent with the nature of a sale, to suppose, that the reversion should be perpetual; and that it should never be in the power of the purchaser, by any means whatever, to acquire the absolute right of the thing sold. The *pactum legis commissoriae in pignoribus* is reprobated as an unlawful paction; inasmuch that, notwithstanding the term within which only the lands are declared redeemable be elapsed, it is still competent for the reverser to redeem the lands; so that a limitation of the term of redemption is truly inconsistent with the nature of a wadset. In every wadset the right of reversion ought to be perpetual. But the very reverse is the case of a proper sale. There any right of reversion created in favour of the seller, must, in its nature, be limited. It is inconsistent with the very nature of the contract, that it should be perpetual: for when it is made perpetual, as it can, by no form of law, ever become a right of absolute property; the consequence is, that, from the very nature of the thing, it must resolve into a mere right of security. The petitioners may give what names they please to the right; but it is perfectly clear, that when lands are disposed for a stipulated price, with a perpetual right of reversion to the disponer, it participates entirely of the nature of a right in security for the sum for which they are made redeemable; which quadrates precisely with the petitioners own ideas respecting the nature of a wadset-right; and when, as in this case, the lands are made redeemable for the precise sum specified in the reversion, without accounting for the rents and profits of the lands during his possession, it resolves entirely into the right of a proper wadset.

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The petitioners do not seem to dispute, that a wadset may be constituted without containing an express clause of requisition, or even without mentioning the word *wadset in gremio* of the deed, providing it sufficiently appear from other clauses in the deed that a wadset-right was intended. Upon that ground it was that your Lordships judgement proceeded in the case of Scottlarvet; and the respondent does humbly maintain, and submits it to your Lordships, that no clause can more clearly point out the right to be a wadset in contradistinction to a proper sale, than the right of reversion being made perpetual. When that is the case, it can never be converted into a right of property, but it must to the end of all things remain a right in security, which is plainly a right of wadset.

The petitioners say, That the writers on our law have hinted at no such distinction; and that the decisions of your Lordships stand directly otherwise: That it has been found in several cases, that the right was a proper sale, notwithstanding that the reversion was perpetual; and particularly in the 1772, in the case Edmonston *contra* Tweeddale.

But there is no occasion for the authority of law-books to prove a proposition clearly founded in the nature of the thing, viz. that where the reversion is perpetual, it can never be converted into a right of absolute property, and must therefore necessarily remain upon the footing of a right granted in security of a sum of money. The petitioners say, that the contrary had been frequently decided; but the respondent takes it for granted, that the petitioners know of no such decisions, otherwise they would have been particularly stated to your Lordships. The respondent, for his part, knows of none.

As to the decision Edmonston *contra* Tweeddale, it does by no means prove what the petitioners alledge, viz. that the right was found to be a proper sale, notwithstanding that the reversion was perpetual. The interlocutor of the court is in the following words.
 “ Finds, That by the conception of the disposition in question,
 “ and of the said writing relative thereto, the said disposition was
 “ granted by the defender, and accepted by the pursuer, *in solutum*
 “ of the debt; but redeemable upon payment of the principal sum, interest, and expences, being recovered by intromission with the rents, or by payment being made by the defender.”

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The above interlocutor does by no means find, that the right in that case was a proper sale. It, with submission, could not find so. It implies a contradiction, that a right clogged with a perpetual reversion, and which, to the end of all things, can never be converted into a right of property, should, notwithstanding, be held a proper sale. All that was found in that case was, that it was not competent for the disponent to insist for payment of his money; which is by no means inconsistent with a right in security. Many were the annualrent-rights of old, where payment could not be demanded by the annualrenter; but he behoved to retain the same, until the debtor thought proper to redeem the annualrent. And indeed, where a wadset contains no proper clause of requisition, nor any clause pointing out a power in the wadsetter to call for his money, the respondent does humbly maintain, that the wadsetter, in such case, has no right to demand payment; but that he must content himself with holding the possession of the lands, until the debtor shall think proper to redeem. And indeed this was generally so far from being a hardship, that a very great benefit did from thence arise to the wadsetter.

On the other hand, that a right, such as the present, containing a perpetual reversion, was a proper wadset, and sufficient to give a freehold qualification, was solemnly determined by the court in the case of Munro of Culcairn.

In that case a disposition was granted by Sir Robert Munro of Fowlis, in favour of George Munro of Culcairn, his second son, which contained the following clause of reversion. " Likeas it is
 " hereby expressly declared, That the foresaid lands, &c. shall
 " be redeemable by me and my foresaids, at any term of Whit-
 " funday hereafter following, for payment or consideration of the
 " sum of 1000 merks Scots money, forty days before the foresaid
 " term, in the hands of any of the magistrates of the town of Tain,
 " or any responsible person of the parish of Alness, if refused by
 " my said son; to which effect a double of this right, or an ex-
 " tract of the seisin to be taken hereupon, shall be a sufficient
 " warrant for redeeming the samen lands, from my said son, and
 " his above specified." This deed contained no clause of requisition, nor was the word *wadset* so much as once mentioned within the four corners of it.

Mr Munro of Culcairn having obtained a charter, and got him-
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self inest, was inrolled as a freeholder of the county of Ross; but a complaint having been preferred against him under the authority of the act of the 16th of his late Majesty, in which it was objected, That his right was not a proper wadset, the Lord Drummore Ordinary, after reporting the case to the court, pronounced an interlocutor upon the 2d of July 1745, in the following terms. " Having advised with the Lords as to the import of the second " objection to Culcairn's qualification, viz. That by his charter " produced of the lands of Contulich, it appears, that the said " lands are redeemable from him by his author Sir Robert Munro his father; repels the same; and finds, That, notwithstanding " thereof, the said Captain George Munro of Culcairn is sufficiently " intitled to continue upon the roll of electors of a member to " serve in parliament for the shire of Ross." And against this interlocutor a most elaborate reclaiming petition, drawn by a very able lawyer, having been preferred, the same was refused without answers.

The petitioners say, That the disposition in that case had been granted as far back as the 1708, prior to the statute of the 12th of Queen Anne. But as that was no sufficient ground for differencing that case from the present, as it is certain, that that statute did equally strike against rights executed before the statute, and those executed after it; so the petitioners find themselves under the necessity of arraigning the judgement as erroneous. But as that case was decided by as able judges as ever sat upon any bench, so it would require something more than the *ipse dixit* of the petitioners to prove, that it is not founded in the principles of the law of Scotland.

It is of great importance to the lieges, that the decisions of the supreme court, especially in questions respecting the constitution of their land-rights, should be uniform; because it is upon the faith thereof that the lieges do rely. It is, in many cases, a matter of indifference, how the matter is fixed, providing it be fixed. It was undoubtedly in the respondent's power, with the same trouble and expence, to have constituted his right in the manner and form contended for by the petitioners, if he had thought that method more unexceptionable; and if the respondent hath framed his right in the manner that was approved of by the judgement of the supreme court, it would be extremely hard, that he should be now told, that his right must be set aside as ineffectual

for the purposes for which it was intended, because your Lordships predecessors were ignorant of the law, and that the respondent ought not to have relied upon their judgement.

The petitioners say, That the decision in the case of Culcainn, does not appear to be defensible upon any ground; for that the deed which gives rise to the question, proceeds upon a general narrative of onerous causes, without bearing that any sum of money was advanced.

But the clause of reversion, is at any rate, sufficient to explain the onerous causes mentioned in the preceding part of the deed. At the same time the respondent apprehends, that the advancing a sum of money, although it is the common and ordinary inductive cause, yet it is not essential to the constitution of a proper wadset. In former times, when money was a scarce commodity in this country, it was common and ordinary for gentlemen to provide their younger sons, by granting proper wadsets upon parts of their lands, redeemable by their elder brother, and his heirs, for payment of such sums as the father thought proper. No money was in that case advanced for granting the right; and yet it was never doubted of, that such deeds were, to all intents and purposes, proper wadset-rights.

The judgement in the case of Dumbarton was pronounced after the constitution of the respondent's right. At the same time he cannot consider it as a judgement against him. There is no similarity betwixt the two cases. The lands were in that case disposed to one person in liferent, and to another in fee; which was certainly a strange anomalous right, and quite inconsistent with the idea or nature of a proper wadset. It was, in the first place, an absurdity, to create a liferent upon a right which was redeemable at the term of Whitsunday 1772, or at any other term of Whitsunday or Martinmas thereafter; and it was likewise absurd for the fiar, to claim a vote upon the footing of being a wadsetter, when he neither did, nor could, draw any profits out of the estate, at least as long as the liferenter lived. It is a strange sort of a wadset, to give the right to one, and the possession to another: so that that judgement is not in the least applicable to the present question. And if the fact were as the petitioners represent it, viz. that the decision had proceeded, not upon the specialties of the case, but entirely upon the footing of a redeemable right struck at by the statute of the 12th of Queen Anne, the
respondent

respondent will be pardoned for paying the same compliment to the judgement, that the petitioners do to the judgement of your predecessors, viz. that it was erroneous: for the respondent, with all submission, cannot but consider it as a clear point, that a disposition of lands, with a perpetual reversion in favour of the disponent, can be considered in no other light than a right in security of a sum of money; and that where, by the conception of the deed, the disponent is intitled to the full possession of the lands, without accounting to any person whatever, it is to all intents and purposes a proper wadset; and therefore, upon the most strict and literal construction, both of the statute 1681, and the statute of the 12th of Queen Anne, the respondent's right, as being to all intents and purposes a proper wadset, must afford a good freehold-qualification.

As therefore the first proposition is clearly established, it becomes truly unnecessary to trouble your Lordships with the second branch of the argument, viz. That a proper sale *sub pacto de retrovendendo*, where the disponent has the full possession during the subsistence of his right, without accounting; that such right is not struck at by the statute of the 12th of Queen Anne, but falls to be considered in the sense of that law as a proper wadset. However, this point is also submitted to your Lordships.

It has been already observed, that it is of no moment what form of words are used in constituting the right: but where a man does with his money purchase an interim right of property in the lands, and in consequence of which he is intitled to the whole issues and profits of the lands, without accounting to any mortal as long as the right subsists; and where the right cannot be taken from him, but upon payment of the sum which he gave for obtaining it; the person possessed of such a right falls to all intents and purposes to be considered as a proper wadsetter in the sense of both the foresaid statutes, and must be intitled accordingly to vote in the election of a member of parliament.

This is plainly the import of the statute 1681. It was clearly the intendment of that law, to confer the right of voting upon the person who was the proprietor of the subject, who held the rents and profits thereof for his own benefit without accounting to any mortal; but that, on the other hand, where it was a mere right in security, and where the person possessed of that right was accountable for his intromissions, that he should not, in virtue of any such right, have a title to vote. Upon that idea it is, that proper wadsetters,

wadsetters, and adjudgers and appraisers, after expiry of the legal are declared to have the right of voting; but that, during the legal, the heritor having right to the reversion, shall have the vote; "and that no person infest for relief or payment of fums, "shall have vote, but the granters of the said rights, their heirs "or successors." The clear idea adopted by that act of parliament was, that the person who was interim proprietor, who was intitled to the full use and benefit of the subjects without account- ing, should be the person intitled to vote. The act of voting is, like any other act of possession, an exercise of his right of property; and the intention of the law was, to confer that privilege upon the person who was intitled to the full use and enjoyment of the subject in every other respect. It was never the intendment of the statute, to distinguish betwixt a proper wadset, and a sale *sub pacto de retrovendendo*, providing the purchaser was intitled to the full use and enjoyment of the subjects, without being accountable there- for; nor was there any room for making the distinction, as their effects were precisely the same. The rights were in their nature the same in substance, and productive of the same effects to the proprietor.

A proper wadset is in reality a sale *sub pacto de retrovendendo*. The benefits arising to the holder of the rights are precisely the same; so that if a right of voting is given to the one, and denied to the other, it is the only particular in which they do differ. But as the legislature can never be accused of absurdity, so it is impossible to suppose, that they would confer upon one right the privilege of voting, and deny it to the other, when the two rights were materially and substantially the same; and therefore it must follow of consequence, that the legislature did not mean to make any distinction betwixt the two cases in the foresaid particular, but that a sale *sub pacto de retrovendendo*, where the proprietor, during the subsistence of his right, was intitled to the full use and possession of the subject, without accounting to any mortal, was in every respect a proper wadset, in the sense both of the statute 1681, and likewise of the statute of the 12th of Queen Anne.

The petitioners argument proceeds upon a misapprehension of the statute of the 12th of Queen Anne. They suppose, that a sale *sub pacto de retrovendendo*, even where the disponent is unaccountable proprietor during the subsistence of his right, is different from a proper wadset; and therefore, being redeemable, is struck at

at by the statute. The respondent, on the other hand, contends, that such a right is in reality a proper wadset; that they are materially and substantially the same; and that as it is impossible to assign a solid reason, why the right of voting should have been conferred upon the one, and denied to the other; that therefore such a redeemable right must in the sense of, and upon a just construction of the statute, be held to be a proper wadset.

The rights intended to be cut down by the statute of the 12th of Queen Anne, were rights of a very different nature, viz. rights held in trust for behoof of others, and not for behoof of the holder; and nominal rights, where nothing real or substantial was vested in the disponent, but were resolveable at the will and pleasure of the granter.

Such is the case at this day of rights granted with reserved powers to alter. In that case nothing real is vested in the disponent as long as the disponent lives. The estate substantially remains with him; and accordingly it has been found, that such estates forfeit to the crown by the crimes of the disponent, and not of the disponent: and it was certainly very proper, that rights of that nature, where nothing but the mere nominal right was transferred to the disponent, and which in general are only calculated to save the trouble and expence of making up titles after the disponent's death, should not give a right to vote in the election of a member of parliament, he having no real or substantial right or interest in the estate.

In former times, and particularly before the statute of the 12th of Queen Anne, these faculties to alter were not much known; but another form prevailed in practice, which at that time was thought more consonant to feudal principles, viz. That when the disponent did not mean to denude himself absolutely, but to have the estate under his power as long as he lived, he disposed the estate, containing a clause of reversion, in favour of the disponent, by which he was intitled to redeem the lands from the disponent, upon payment or consignation of an elusory sum, such as an angel of gold, rose-noble, &c.; and there are many instances in the records of the court, where orders of redemption have been used, and declarators prosecuted, upon such rights. Hence such rights are very properly called redeemable rights; and it was to guard against rights of that kind, and estates held in trust, where nothing real was vested in the person of the disponent,

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that the statute of the 12th of Queen Anne was made; and the statute can only be understood to apply to redeemable rights of that kind, when put in opposition to proper wadsets. It is impossible to presume, upon any just rule of construction, that the legislature meant to put in opposition to proper wadsets, rights which were materially and substantially the same with proper wadsets, and which were productive of the same consequences and effects to the holder.

And that this is a fair and just construction of the statute, is evident from the very preamble of the statute itself: "Whereas of late several conveyances of estates have been made in trust, or redeemable for elusory sums, no ways adequate to the true value of the lands, on purpose to create and multiply votes in elections of members to serve in parliament for that part of Great Britain called *Scotland*, contrary to the true intent and meaning of the laws on that behalf."

It is plain from this preamble, that the evil intended to be remedied by the statute, was the voting in consequence of rights held in trust, or where no more than a nominal right was conveyed, defeasible by the payment of an elusory sum; or, in the language of the present times, a right under a reserved faculty to alter. The substantial right, in these cases, remained with the disponent: nothing substantial was given to the disponent. It was certainly very improper, that the holders of such rights should be allowed to vote: but it is plain, that the statute was never meant to apply to the case where a person purchases a temporary right to an estate, and who, in consequence of his purchase, is intitled to the full use and possession of the estate during the subsistence of his right, and who cannot be denuded of his right, but upon repayment of the sum that was advanced for procuring the right; and which right is materially and substantially a proper wadset, and therefore falls under the exception of the statute.

The statute ought not to receive a strict literal construction, but agreeable to what appears to have been truly meant and intended by the legislature. If the statute was to bear a literal construction only, rights, where the granter reserves a full power to alter, would not be struck at by the statute; because, although the right is a revocable right, yet it is not a redeemable one; and it is only redeemable rights that are mentioned in the statute:

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but as a right, defeasible at the pleasure of the granter, was equally nominal as a right redeemable for an elusory sum; so, upon a just construction of the statute, not according to the words, but according to the true spirit and intendment of it, your Lordships have uniformly found, that such rights do not intitle to vote.

On the other hand, let the case be supposed, that in a fair sale the term of redemption is suspended for the space of a hundred years, such a right is literally a redeemable right; and yet it is believed, that it could not be seriously maintained, that a person possessing an estate under that right could, upon a just construction of the statute, be denied a vote in the election of a member of parliament. It never could be the intention of the legislature to cut down a right of that kind; and the respondent is humbly persuaded, that, upon a fair and a just construction of the statute, your Lordships would hold such estate as affording a good freehold-qualification. And for the same reason, the respondent does, with all submission, apprehend, that upon no rule of construction can the statute be understood to apply to a fair and a proper sale *sub pacto de retrovendendo*, where the disponent, in consequence of his purchase, is intitled to the full use and possession of the estate during the subsistence of his right, and who cannot be denuded, but upon repayment of the sum that was advanced for procuring the right.

The petitioners affect to consider the redemption-money in this case as an elusory sum; but with what justice, is humbly submitted. The sum, it is true, is not great; but it is fully as great as any person would chuse to advance upon the subject disposed. The sum is L. 20 Sterling; and the yearly feu-duty payable out of the estate is only 11 s. 1, $\frac{4}{2}$ d. : so that it is so far from being elusory, that, independent of the casualties of superiority, the respondent draws little more than 2 $\frac{1}{2}$ per cent. for his money. And indeed the observation comes with a bad grace from the petitioner, when the very qualification in virtue of which he stands upon the roll of freeholders in this county, and upon which he offered his service at last election as their representative in parliament, is not a more substantial estate than that of the respondent.

The petitioners found also in this case upon the oath appointed by the foresaid statute of the 12th of Queen Anne. But the
respondent

respondent calls upon the complainer to point out a single word in that oath which will strike against the present right, and which would not equally apply to a proper wadset, even of their own framing; and as the petitioners themselves admit, that a proper wadsetter is intitled to vote, and may with a safe conscience take the oath, a doubt cannot be entertained, that the respondent did with equal safety take the oath in this case. And, upon the whole, upon the first point, the respondent is humbly confident, that your Lordships will have no difficulty to repel the objection founded on the nature of the respondent's right. The respondent has already shown, that his right is neither struck at by the words nor spirit of the statute of Queen Anne; for that his right is to all intents and purposes a proper wadset; and, 2^{do}, That it was not the intendment of that statute to cut down a qualification founded upon a fair sale *sub pacto de retrovendendo*.

The petitioners, in the next place, contend, That the respondent's qualification is defective, in respect of the nullity of his seisin. The ground of this objection is, That Robert Reid having appeared as attorney for Captain Dalrymple, and John Morris as sheriff, in that part specially constituted, by virtue of the precept of seisin contained in the charter, they proceeded so far properly, by Robert Reid producing the charter, and precept therein contained, and delivering the same to John Morris, the sheriff in that part, and requiring him to execute his office; which the said sheriff in that part, knowing to be just and reasonable, he received the charter into his hands, and delivered the same unto the notary-public, to be read and explained to the witnesses; which accordingly the notary did, "Post cujusquidem, &c, *præfatus* Robertus Reid, *vice-*
 " *comes* in hac parte sibi inde commissi, statum et sasinam heredita-
 " riam, sed redimabilem semper, et sub reversione modo prædict.
 " pariter et *possessionem actualem, realem, et corporalem*, totarum,
 " &c. aliaque supra mentionat. *dict. Hugoni Dalrymple*, per tradi-
 " tionem et deliberationem terræ et lapidis fundi *dict. terrarum*
 " *in manibus dict. Joannis Morris*, tanquam *actornati antedict.*
 " secundum tenorem *dict. cartæ*, et præcepti sefinæ suprainsert.
 " inibi content. et dispensationes content. in *dict. carta*, dedit,
 " tradidit, pariterque deliberavit: super quibus omnibus et singu-
 " lis *dict. Joannes Morris*, tanquam *actornatus antedict.* a me, no-
 " tario publico, hoc præsens publicum instrumentum, seu plura
 " publica instrumenta, sibi fieri petiit. Acta erant," &c.

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The petitioners say, That as it appears from the foresaid instruments, that seisin was not given to Robert Reid, the Captain's attorney, but by him to John Morris, the sheriff, that this is a total nullity; as it was a plain absurdity for Captain Dalrymple, who had no right in the lands, to give seisin to the superior. But the respondent is humbly confident, that your Lordships will still remain of your former opinion, that there is nothing in the objection, and that it ought to be disregarded.

Now that the register of seisins is introduced, and when every important consequence of an investment depends upon the registration of the investments, the cutting down instruments of seisin upon niceties and subtilties, and critical constructions, can have no other tendency than to distress and embarrass the lieges without any one salutary consequence resulting from it. This subject had been fully considered previous to the last general election, on occasion of the various objections stated against freehold-qualifications, on account of the dispensations being improperly used. And your Lordships were induced to regulate some of your decisions by the rigid rules which perhaps were expedient in former times. But the House of Lords corrected these judgements; and which have since met with the approbation of your Lordships, and of the nation in general.

The respondent at the same time does not mean to maintain, that an instrument of seisin is an useless solemnity, and ought to be dispensed with. He, on the other hand, admits, that it is very properly calculated for the security of the lieges in the establishment of their land-rights. Neither does he mean to maintain, that defects in seisins are suppliable by extrinsic evidence. But what he humbly contends is, that when it appears evidently from the face of the instrument itself, that the thing was done, that delivery and seisin was actually given, it ought not to be set aside by what evidently appears to be nothing else than a mere blunder of the writer in transcribing the instrument.

This is precisely the nature of the present objection. It is clear from the instrument itself, that seisin was *de facto* given properly, and in the usual manner. The instrument bears, that a certain person appeared as sheriff, and another person appeared as attorney; and that, after going through the usual solemnities, delivery of earth and stone was given by the *said sheriff* to the *said attorney*: so that there cannot be a doubt, that seisin was properly

perly given: and the whole blunder lies in this, that a blank having been left in extending the instrument for the names of the sheriff and the attorney, it appears afterwards to have been filled up with different ink; and by the blunder of the writer, the name of the attorney is inserted in place of the name of the sheriff, and the name of the sheriff in place of the name of the attorney; which, upon no principle of law or of justice, ought to have any important consequences, when it appears from the face of the instrument itself, that feisin was properly given. It bears, that *vicecomes antedict.* gave feisin to the respondent, by delivery of earth and stone to the *attorney antedict.*: it is from thence plain, that the person who was appointed sheriff, gave feisin by delivery of earth and stone to the person who was appointed attorney.

In giving of feisin, your Lordships know, that no special commission is given to one person to act as sheriff or bailie, and another special commission given to another person to act as attorney; but these are left blank in the precept of feisin; and the grantee being possessed of the precept, is thereby sufficiently authorised to cause any persons he thinks proper to act as sheriff and as attorney; and being possessed of the precept is sufficient authority for his doing so: so that Reid might have acted either as sheriff or attorney; and Morris, on the other hand, might have acted also either as sheriff or attorney; and whether Morris should be considered as attorney, and Reid as sheriff, or *vice versa*, it is self-evident from the face of the instrument, that the person who was appointed to act as sheriff, did deliver earth and stone of the lands to the person who was appointed to act as attorney, which, in every respect, was an unexceptionable feisin, and which therefore ought not to be affected by what appears clearly to be nothing else than a mere blunder in the writer.

Accordingly your Lordships, in sundry cases, have disregarded such mistakes, where you were satisfied, from the face of the instrument, that feisin was really given. In the case Gordon of Techmurie against Brodie and others, it was objected, That Mr Gordon's feisin bears, that his investment was given upon the mill of Longhill *the said 30th of September*; but that no such date was mentioned in the beginning of the same. The feisin at the beginning bears the whole to be done upon the *1st of October 1771*, and being contradictory in itself, can bear no faith.

July 20. 1773. Your Lordships at first sustained the objection, and dismissed the

the complaint. But upon advising a reclaiming petition, wherein it was maintained, that such critical objections, voiding an instrument so essential in the feudal constitution of land-rights, is of great importance to the law, and in point of precedent, as it might deeply affect the rights and interests of many, your Lordships altered the former interlocutor, and ordered Mr Gordon to be inrolled.

In the case Gordon of Hallhead against Brodie and others, it was objected, That no proper seisin was produced for Mr Gordon: That his seisin contained separate and distinct lands, but that there is no mention of infeftment being given for the different lands upon each of the tenements respectively and successively, although they confessedly lie discontiguous; and that the notary has thrown them all together, as if they were one tenement, and attempted to make one infeftment serve for the whole. And, *2do*, That the bailie had not used, at least that the notary had not declared that he used, the legal and proper symbols for giving infeftment in the lands; seeing the instrument only mentioned the delivery of earth and stone *for* the lands, without declaring that it was the earth and stone *of* the lands which were so delivered. But your Lordships repelled the objection, and ordered Robert Gordon to be inrolled; and upon a reclaiming petition and answers, your Lordships adhered.

In the case Douglas of Douglas against Robert Chalmers, the instrument of seisin sets forth John Wilson's appearing as attorney for and in name of Robert Chalmers, and John Crawford, the liferenter and fiar, having in his hands the charter and disposition in favour of the said Robert Chalmers in liferent, and John Crawford, his heirs and assignees, in fee. These writings were delivered by John Wilson to the bailie; who was thereupon required to proceed to the execution of his office; and after the writings were delivered to the notary, and published, the bailie gave, "*statum et facinam hereditariam, pariter ac possessionem actualem, realem, et corporalem, dict. Joanni Crawford, heredibus suis et assignatis quibuscunque, hereditarie et irredimabiliter, totarum et integrarum, &c. per traditionem terræ et lapidis, &c. dicto Joanni Wilson, tanquam actornato pro et in nomine dict. Roberti Chalmers, et Joannis Crawford, pro respectivis eorum juribus, vitalis redditus, et feodi antementionat.*"

Here the name of Robert Chalmers the liferenter was forgot in writing

writing out the instrument of feisin : and although the vesting the party in the actual, real, and corporal possession, is the very essence of the feisin, yet the feisin was sustained. Your Lordships at first sustained the objection ; but being sensible of the great danger arising to land-rights, if such critical objections were to be listened to ; and as it appeared sufficiently clear, from the instrument itself, that the thing was actually done, and that the defect did consist entirely in a blunder of the writer in extending the instrument ; so your Lordships, upon advising a reclaiming petition and answers, sustained the feisin, and Mr Chalmers was continued on the roll.

In the case of Milton, 24th February 1676, collected by Dirleton, " A feisin being quarrelled, because it carried both the
" bailie and attorney to be one person, who could not both *give*
" and *take*, the Lords nevertheless, in respect it did appear evidently that it was a mistake of the notary, seeing, by the first
" part of the feisin it was clear, that there was a distinct attorney,
" who did present the feisin to the bailie, did therefore incline to
" sustain the same."

Mar. 3. 1762.

In the case of Captain Livingston against Lord Napier, a mistake in the notary, extremely similar to the present, was stated as an objection, and over-ruled by your Lordships, and also by the House of Peers. There Alexander Livingston appeared as bailie, and John Bryce as procurator for James Livingston, the person to be infeft. Actual, real, and corporal possession of the lands, was given to the said James Livingston, " be deliverance to the said
" John Burn, as procurator for and in his name, of earth and
" stone," &c. But there was no such person as John Burn mentioned in the preceding part of the instrument. It was maintained, That this was only a mistake in transcribing the name of the procurator for receiving the delivery of the feisin ; which mistake was corrected in other parts of the feisin, and brought to a certainty as to the person who acted as procurator in receiving the symbols. Accordingly the court sustained the feisin ; and the judgement was affirmed in the House of Peers.

In all these cases your Lordships proceeded upon this just and expedient principle, That where it appeared from the face of the instrument, that the thing was actually done, that feisin was in reality properly given, blunders or mistakes committed by the writer in transcribing the instrument, when they evidently appear to

to be such, ought not to be laid hold of to annul the seisin, and by which the rights and interest of the lieges may consequentially be deeply affected; and upon the very same principle, the objection which has been stated to the seisin in this case, has been most justly over-ruled.

The petitioners mention sundry cases, in which, upon defects in the instrument, the seisins were found null. But although these cases were more applicable to the present than they really are, this general answer would occur to the bulk of them, That the rigorous observance of forms, which before the registration of seisins were thought of more importance, have been much relaxed of late years; it being thought inexpedient to cut down the rights of the lieges upon defects that were not altogether essential in the constitution of the right; and that accordingly, in many cases, seisins labouring under defects have been sustained both by your Lordships and the House Peers, which at a more early period might perhaps have received a different judgement.

At the same time it is very apparent, that the cases mentioned in the petition are *toto cælo* different from the present case. The respondent neither does maintain, nor has he any occasion to maintain, that seisins cannot labour under such imperfections as to render them null and void. On the contrary, as a seisin is a necessary and essential solemnity in the constitution of land-rights, so if seisin was not given, or not given *habili modo*, it ought to be held as not given at all, and the investment in such cases must go for nothing; and this is all that is found by the decisions mentioned in the petition. In the case, Keir against Lady Vogrie, the instrument did not bear the delivery of the symbol of a penny money; and as this is essential to the constitution of an investment of annualrent, so the court, in that case, very properly reduced the seisin. It proceeded upon this ground, That it did not appear from the instrument that the thing was done. And the same observation occurs upon the decision Murray contra Hope.

As to the decision, Primrose contra Durie, it proceeded upon this ground, That faith was not to be given to the facts set forth in the instrument, when the notary did not say, that he had seen or heard them, or consided with his knowledge; and consequently, that there was not sufficient evidence, from the face of the instrument, that seisin was in reality given.

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The same observation does likewise apply to the last decision mentioned in the petition, viz. that of Ross of Priesthill. The instrument in that case did not set forth, that any infeftment was given in the lands of Mickletarril; which undoubtedly behoved so far to be fatal to the instrument. But it will be obvious to your Lordships, that all and each of these cases are widely different from the present, where it appears with clearness and certainty, upon the face of the instrument itself, that infeftment was actually given, that the thing was in reality properly done, and that the objection is founded entirely upon what must also appear, from the face of the instrument, to be a mere blunder in the writer in filling up one name in place of another; but that, notwithstanding thereof, it was, upon the whole, sufficiently clear, that infeftment was properly given, by the sheriff or bailie's delivering the proper symbols to the person who acted as attorney for the respondent: And therefore the respondent does, with some degree of confidence, expect, that your Lordships cannot have the least difficulty in being of opinion, that the objection was most justly over-ruled.

The rest of the petition is consumed upon the manner of stating the vote when the cause was determined. This part of the petition appears to the respondent to be somewhat new and unprecedented. It no doubt frequently has been the subject of deliberation, how, and in what manner, the question ought to be put; but after it has been put by the court, in the manner that appeared to them to be the most proper for doing justice to the litigants, and has been determined accordingly, it is believed, that hitherto the state of the vote was never made the subject of a reclaiming petition. But one need be amazed at nothing that happens in political disputes.

The respondent will not follow the petitioners through the several observations made in the petition, some of which are totally foreign to the question; because, with all submission, it appears perfectly clear, that the vote could not, with propriety, have been put otherwise than it was done; and that the putting it in the way contended for by the petitioners, could have no other tendency than to pervert justice.

Two objections were stated in this case to the respondent's freehold-qualification: the one was founded upon the nature of the right that was constituted; and the other was an objection to the
 feisin

decision that was taken in completion of the right. These two objections are as separate and distinct in their nature, as any two things possibly can be. They had no connection with, or did in the least hinge or depend upon one another. They both may be good, or both may be bad, or the one may be good, and the other bad; and the decision given upon the one could have no sort of influence upon the decision to be given upon the other.

It is no doubt true, that if either of the objections are well founded, it would prove fatal to the respondent's qualification, as it now stands.

But, on the other hand, it is equally clear, that if there is no relevancy in either of the objections, the respondent's qualification must be held as good, and he could not, without the grossest injustice, be turned off the roll.

The question then comes to this, What is the proper method of putting the vote, in order to determine whether there is a relevancy in any of the objections, or not? This question, in the respondent's apprehension, admits of a very easy solution. It appears plain to him, that it cannot possibly be done in any other way, than by putting a vote upon each objection. It is demonstrably clear, that it would be unjust to the highest degree, to turn the respondent off the roll, if the court was of opinion that there was no relevancy in either of these objections; and yet this is the very thing aimed at by the petitioners. What they are now contending for, has clearly that tendency. By putting one general question, upon the sufficiency of the respondent's freehold-qualification, he might be turned off the roll, when at the same time the court was of opinion that no relevant objection lay to his qualification. This is the very thing which the petitioners aim at, and is indeed avowed by them in their petition; but it is so clearly fraught with injustice, that the respondent is confident it will never be listened to by your Lordships.

Let the case be supposed, that in place of two objections there had been eight objections stated to the respondent's qualification, but that there was only a single judge for sustaining any one objection; it would certainly be absurd to say, that any good objection lay to the respondent's qualification, when every objection was found to be groundless, by a majority of fourteen to one; and yet, by putting one general vote upon the sufficiency of the respondent's

respondent's qualification, he would be struck off the roll by a majority of the court.

The petitioners may puzzle and perplex, and twist the argument, as much as they please; but the proposition comes plainly to this, Whether two or more bad objections shall be held as equal to one good objection? The respondent has always understood, that cyphers, however multiplied, can never make a number; and, for the same reason, a thousand ill-founded objections must be held as equal to no objection at all.

Indeed, following the method proposed by the petitioners might lead to strange consequences. After your Lordships had, upon a general vote, ordered the respondent to be expunged the roll, a question the next day arose of private right, where the only point that would fall to be determined by your Lordships is, Was, or was not, the right a proper wadset? In like manner, a question might afterwards arise, where the only point to be determined was, Whether the seisin was a good or a null seisin? Your Lordships in these cases would be laid under the necessity of determining both the points now in dispute; and it would be something extraordinary, that the respondent should be turned off the roll, when, in these after questions, your Lordships should find, that his right was a proper wadset, and his infeftment valid and unexceptionable: And therefore the respondent is humbly persuaded, that your Lordships will never adopt a measure which would plainly lead to so absurd consequences.

As what is now contended for by the respondent is founded in reason and the nature of the thing, and without which it is impossible that justice can be done to parties; so it is likewise clearly founded in the practice and decisions of the court.

Thus, in a reduction of a decreet of the commissioners of supply of the county of Cromarty, the following interlocutor was pronounced upon the 17th of December 1767. " On report of
" the Lord Strichen, and having advised informations, and additional informations, for both parties, with the excerpts for the
" pursuers, and observations thereon for the defenders, the Lords
" *repel the three first reasons of reduction*; but as to the fourth reason of reduction find, That the lands of Glenurquhart ought
" to have a proportion allotted to them of the *cumulo* valuation
" of the lands which formerly belonged to Dallas of St Martin's;
" and as no such proportion was allotted to them, sustains said
" fourth

“ fourth reason of reduction, reduce, decern, and declare accordingly ; superseding extract till the 15th day of January next.”

Sir John Gordon claimed to be inrolled as a freeholder of the county of Cromarty at Michaelmas 1766 ; and the meeting having rejected his claim, he preferred a complaint. To this complaint it was answered, *imo*, That he neglected to produce the retour, which was the evidence of his qualification ; *2do*, That he had no proper feudal title to the lands ; and, *3tio*, The retour upon which he claimed did not apply to the lands in his charter and feisin : and upon the 17th of February 1767 the court pronounced the following interlocutor. “ The Lords having advised this complaint, with the answers, replies, and duplies, they repel the second and third objections made to the complainer’s title ; but sustain the first objection, That the complainer did not produce his retour to the meeting of freeholders at the last Michaelmas head court ; therefore dismiss the complaint, and find the complainer liable in the sum of L. 30 Sterling, in terms of the act of parliament, and full costs of suit ; and decern ; and ordain an account of said costs to be given in.”

Mr Pulteney was inrolled in the same county at Michaelmas 1766 ; and a complaint having been preferred against him, the following interlocutor was pronounced upon same 17th February 1767. “ The Lords having advised this petition and complaint, with the answers thereto, now and formerly given in for Mr William Johnston respondent, they repel the preliminary objection to the complaint, That there is no person upon the roll of freeholders intitled to complain ; in respect, by interlocutor of this date, the title of William Gordon of Newhall to be upon the roll, is sustained : And sustains the fourth objection, to the division of the valuation of the estate of Cromarty : And finds, That the respondent was not intitled to be inrolled in the roll of freeholders of the county of Cromarty ; and therefore grant warrant to and ordain the sheriff-clerk of said county to expunge his name from the said roll ; and decern.”

A similar judgement was pronounced the next day in the case of Henry Davidson of Tulloch.

In the conjoined complaint of Sir Alexander Mackenzie and thirteen others, claiming to be inrolled as freeholders in the coun-

ty of Cromarty, the following interlocutor was pronounced upon the 9th of February 1768. “ Repels the whole objections against the complainers titles to be inrolled upon the roll of freeholders of the county of Cromarty, except the objection, That in dividing the *cumulo* valuation of the estate of St Martin’s, upon which the claims of Sir Alexander Mackenzie, and Mr Alexander Law, David Ross of Priesthill, and John Gordon, are founded, the commissioners of supply did not allow any proportion thereof to the lands of Glenurquhart; which objection is now under review of the court, in the process for reducing that division; and without prejudice to the respondents being heard upon the objections contained in the petition given in for them to this court, which was appointed to be answered upon the 5th instant; and reserving to the complainers their defences against the competency of any such objections: But with respect to the objection now insisted on, That the titles in the complainers persons are nominal and fictitious, the Lords having advised the depositions emitted by the said Robert Blair, James Hay, Leonard and William Urquhart, Mr Alexander Law, and David Ross writer, complainers, in consequence of the reference to their oaths; and having heard parties procurators thereupon; they find it proved, that the lands claimed on by the complainers last named, are not true and real estates in them for their own use and benefit; but that they are nominal and fictitious, created in them in order to enable them to vote at the ensuing election; and therefore dismiss the complaints, &c.”

In the case of Charles Dalrymple of Orangefield, three separate objections were made to his freehold-qualification; and upon the 20th of January 1768, the court pronounced the following interlocutor: “ Having advised the petition and complaint, answers thereto, replies, and duplies, and writs produced, they repel the objection to the respondent’s title, That the same is only a liferent of a superiority by constitution, and also repelled the objection to the valuation of his lands; but sustain the objection proponed against the validity of his seisin; and therefore find, That the freeholders of the county of Renfrew did wrong in inrolling the respondents in the roll of freeholders for the said county at Michaelmas last; and grant warrant to, and ordain

“ ordain the sheriff-clerk of the said county to expunge him from
 “ said roll ; and decerned.”

In the complaints at the instance of George Skene of Skene, against James Milne of Woodhill, 19th January 1768, the following interlocutor was pronounced : “ The Lords having advised
 “ this petition and complaint, answers thereto for James Milne,
 “ replies and duplies, and writs produced, they repel the objection with respect to the division of the valuation of the respondent’s lands ; and also repel the objection as to the manner of the respondent’s taking the oath of possession ; and find, That the
 “ freeholders did right in admitting the respondent James Milne
 “ upon the roll of freeholders of the county of Forfar at Michaelmas last ; and therefore dismiss this petition and complaint,
 “ and decern.”

In the case of Mr Walter Stewart against Mr David Dalrymple, July 28, 1761, nine different objections were stated, and received separate judgments ; and the sixth point was appealed, and the decree reversed. In that case, if there had been but one judge upon each point, by following the mode contended for by the petitioners, the qualification would upon the whole have been found insufficient, in place of being found good.

The same rule was followed in the case betwixt the Duke of Hamilton and Mr Douglas. Various points did there occur ; and a special interlocutor was pronounced upon them. The same rule was observed in the case of William Gordon against Maitland, 1st December 1757 ; as also in the Creditors of Alison *contra* Auchinlecks, 13th January 1759 ; Slatter *contra* Ayton, 9th February 1759 ; Competition of Appin’s creditors, 10th December 1760 ; Christian Sheppard against Alexander Innes, 19th November 1760.

The political disputes in the counties of Banff and Elgin were also determined upon considering each objection. Thus the Lords repelled the first and second objection ; and before answer allowed a proof of the third objection. And in the case of Lord Adam Gordon against James Duff, your Lordships, on 1st July 1773, “ having advised the memorials given in for the parties,
 “ with the writs produced, *repelled the objection to the respondent’s seisin* ; but sustained the objection to the first part of the third objection ; and granted warrant to the sheriff-clerk to expunge
 “ him from the roll ; and decern.”

In the case of Captain Livingston against Lord Napier, your
 Lordships

Lordships also pronounced a special interlocutor respecting the several objections that were offered.

Certain cases are mentioned in the petition, where it is said, that one general question was put, though different points did occur. But the respondents have no occasion to maintain, that in every case separate questions should be put upon every different point that does occur. The only general rule is, to put such questions as are necessary for doing real and substantial justice to the rights of parties. Sometimes that may be accomplished by one general question, and sometimes different questions become necessary; and it depends entirely upon the nature and circumstances of the case, whether the one mode or the other ought to be adopted.

The case of Balnagown, mentioned in the petition, is no wise applicable to the present case. According to the respondent's information, there was no difference of opinion with regard to different points; and it is a mistake to say, that if the cause had been split into points, a different judgement would have taken place. There was therefore no occasion for pronouncing a special interlocutor. And the same observation will apply to the case of Macneil. There the points were not separate, distinct, and unconnected with one another. The question was, Whether the deed was an effectual deed in favour of Macneil or not? and it is plain, that it was equally exceptionable, whether it had not been delivered, or delivered only in trust.

Neither is the case of Howie in the least applicable. For the question truly there was, Whether the bill was actionable or not? That question depended upon circumstantiate evidence; and in every such case it would be absurd to the highest degree to put a vote upon every single circumstance tending to establish the point in issue. But the whole circumstances must be taken together; and the question from thence resulting, is one general question, Whether, upon the whole, is the evidence sufficient or not?

As to the case of Faichney, the respondent humbly begs leave to doubt, whether it was not properly moved in that case, to put separate questions; and the cause is still depending before your Lordships, upon a reclaiming petition and answers. At the same time there is no arguing from that case to the present; because the different points that were there agitated, were by no means so separate, distinct, and unconnected, as the present: but it may with some justice be said, that they did truly verge into one and the

the same point, viz. Whether was the deed executed on deathbed, yea or not?

The petitioners say, That every judge who was of opinion, that either of the objections were well founded, must of consequence be of opinion, that the respondent has no right to remain upon the roll; and yet, by following the mode that has been adopted, your Lordships are constrained, contrary to your own opinion, to admit him upon the roll.

But this language is very unlike that of persons who are members of the same society, and living under a civilized government. It is inconsistent with every idea of good order and government, to suppose, that any single judge, or person, or more if a minority, are intitled to set up their opinions in opposition to the opinions of the majority. In establishing any point, every man is at liberty to follow his own opinion, and ought undoubtedly to be governed by it alone. But when a point is fixed and established by a majority of the court, that must be held to be law; and every judge, though it was decided contrary to his own opinion, must in every subsequent question hold it to be well founded in law and in justice, and decide accordingly. Nor would any of your Lordships think yourselves at liberty to follow a different rule, although voting by ballot, as supposed in the petition.

The petitioners say, That at the meeting of freeholders, the respondent could not have demanded separate votes upon the objections if both had been there stated, (as they were not); and if this would not have been competent in the court of freeholders, a different rule cannot be adopted by your Lordships, who are only a court of review.

The respondent is sorry to say, that it too frequently happens, that in meetings of freeholders, neither precision nor material justice is much regarded. But your Lordships surely will never follow their example, when they deviate from the right path. You will not be influenced by what they do, but by what they ought to have done. The respondent does with confidence maintain, that if both objections had been stirred in the meeting of freeholders, and if a vote had been demanded upon each objection, it was the duty of the freeholders to have complied with the demand, and they would have been guilty of gross injustice in refusing it.

The petitioners say, That the objection to the form of the respondent's qualification was carried by the casting voice, in opposition to the delivered opinion from the chair.

But the respondent will be allowed to say, that the observation is highly injurious. The character of the Honourable Judge who that day presided in absence of the Lord President, is above being hurt by such reflections. His Lordship expressed a doubt, whether it was a wadset or a redeemable right. He, with his usual pleasantry, called it a bad picture of either: but when it was necessary for him to give his voice either for the one or the other, he declared he thought it a proper wadset; and his voting so, clearly explained his opinion.

The respondent has too high an opinion of the candour of the Honourable Gentleman who signs the petition, to suppose, that he does not really believe what he there sets forth. But the respondent can easily conceive, that the keenness with which that Honourable Gentleman had engaged in the political contest which gives rise to the present question, may have made him construe expressions differently from the sense they were intended to convey; and the respondent can say for himself, that what was said from the chair did by no means strike him in the light in which it has been represented in the petition.

In respect whereof, &c.

RO. MACQUEEN.

Papers



PAPERS referred to in the foregoing Answers.

Copy of a Disposition, or Wadset-right, in use to be granted in a Northern County.

I A. B. immediate lawful superior of the lands and others after disposed, for the sum of L. instantly paid and delivered to me by C. D. whereof I hereby exoner and discharge him, his heirs and successors, for ever, do, by these presents, *sell, alienate, and dispo*ne, to and in favour of the said C. D. his heirs and assignees whatever, heritably, but redeemable, and under reversion, in manner after expressed, all and whole, the lands of in the which lands, mill, teinds, and others above disposed, with the pertinents, I hereby bind and oblige me, my heirs and successors, to duly and lawfully infeft, vest, and seise, the said C. D. and his forefaids, heritably, but redeemable, and under reversion, in manner after specified, to be holden from me and my above written, of our immediate lawful superiors thereof, in the same way and manner, and as fully and freely in all respects, as I, my predecessors, or authors, held, hold, or might have holden the same ourselves; and for that effect I hereby make, constitute, and ordain and each of them, conjunctly and severally, my procurators and commissioners, to compare for me, and in my name, before my immediate lawful superiors of the lands and others foresaid, and, with all due reverence and humility, by staff and baton, as use is, to resign, as I, by these presents, resign, renounce, surrender, overgive, and deliver, all and fundry the said parts and portions of the said lands of in the hands of my immediate lawful superiors of the lands and others foresaid, or their commissioners having power from them to receive resignations, and grant new infeftments thereon, in favour, and for new infeftment of the same, to be made, given, and granted, to the said C. D. and his heirs and assignees whatever, heritably, but redeemable, and under reversion, the lands, mills, teinds, and others above disposed, from the said C. D. and his heirs and successors, at the term of W. or at
A any

any other term of W. thereafter, upon payment to him or his forefaids, of the fum of L. and in case of abſence or refusal, conſignation of the ſaid fums in the hands of the dean of guild or treaſurer of the city of Edinburgh for the time being, to be made forthcoming to the ſaid and his forefaids, on the peril of the conſigner, and the time and place of payment or conſignation to be within St Giles's church in Edinburgh, where the pulpit ſtands, betwixt the hours of ten and twelve in the forenoon, on the ſaid term of, or on any other term of W. thereafter, forty days premonition for that effect being always made of before by me or my forefaids to the ſaid C. D. or his above written, perſonally, or at their dwelling-places, if within Scotland; and if forth thereof, at the market-croſs of Edinburgh, pier and ſhore of Leith, in preſence of a notary-public and witneſſes, as effects; and upon payment or conſignation of which fum, in manner above expreſſed, the lands, teinds, and others, above diſponed, ſhall, and are hereby declared to be lawfully redeemed, looſed, and diſburdened, of the above-written diſpoſition and infeſtments, as fully and freely in all reſpects as if ſuch diſpoſition or infeſtments had never been made, given, or granted, without the neceſſity of any decreet or declarator for that effect, any law or practice to the contrary notwithstanding: and for uſing which order of redemption, a copy hereof, or of the inſtruments of ſeiſin to follow hereon, is hereby declared to be as valid, effectual, and ſufficient, as if a particular letter of reverſion was for that effect, of this date, given, granted, ſubſcribed, and delivered to me by the ſaid with which, and all that can be objected againſt the ſame, he, for himſelf, his heirs, and ſucceſſors, has diſpenſed, and, by acceptation hereof, diſpenſes for ever; and becomes bound and obliged, upon redemption of the ſaid lands and others, in manner foreſaid, to give, grant, ſubſcribe, and deliver to me, my heirs, and ſucceſſors, letters of regreſs, and all other writs neceſſary for retroceſſing me, in my full right and title of the lands, mill, teinds, and others above diſponed, veſting and ſeiſing me again in the ſame; upon which conditions and proviſions theſe preſents are granted and accepted of, and not otherwiſe; and with and under the ſaid conditions and proviſions, I, by theſe preſents, bind and oblige me, my heirs, and ſucceſſors, to warrant, acquit, and



and defend, this present disposition, lands, mill, teinds, and others therein contained, and infestments to follow thereon, to be good, valid, effectual, and sufficient, free, safe, and sure, to the said C. D. and his foresaids, from all evictions, burdens, and incumbrances whatever, during the not redemption, at all hands, and against all deadly, as law will: Excepting and reserving always forth and from the said warrandice all feu-rights and charters granted by me, my predecessors, or authors, to and his authors, of the foresaid lands of to be holden feu of me and my foresaids, for payment of L. of yearly feu-duty, or any other feu-duty or casualties therein mentioned; acts, instruments, and documents, upon the premises, to take and extend; and generally every other thing legal and necessary to do, that I could have done myself if personally present, or to the office of procuratory in such cases is competent; promising to hold firm and stable, &c.: And for the said C. D. and his foresaids their further security, I hereby assign, transfer, and dispoise, to and in his favour, the haill writs, rights, progress, and title-deeds, of the lands, teinds, mills, and others above disposed, any wise conceived in favour of me, my predecessors or authors, in so far as the same may be any wise necessary to support the said C. D. &c. and his foresaids, their right and title to the lands and others above disposed, during the not redemption; and bind and oblige me to make the said writs and title-deeds forthcoming to them for that effect: and I further hereby make, constitute, and ordain, the said C. D. and his above written, my cessioner and assignee, in and to all feu-rents and casualties of the lands and others above disposed, at and after the term of next, during the not redemption, with full and ample power to call and sue for, uplift, receive, and discharge the same, and every other legal and necessary thing thereanent to do, as fully and freely in all respects as I could have done before granting of this assignation; which I bind and oblige me to warrant, so far as concerns the said writs and evidents, at all hands, and against all deadly, as law will; and so far as concerns the feu or other duties, rents, and casualties, from my own facts and deeds allenary. And, lastly, I bind and oblige me and my foresaids, to free and relieve the said C. D. and his above written, of all ministers stipend, schoolmaster's salary, feu, teinds, or other duties due, out of the land,

land, teinds, mills, and others above disposed, at and preceding the said term of next, which is hereby declared to be the said C. D. his entry thereto; he and his forefaids being, by acceptation hereof, bound and obliged to free and relieve me and my above written of all minister's stipend, schoolmaster's salaries, and all feu and teind duties, cesss, public burdens, and others whatever, payable thereafter out of the lands, mill, teinds, and others above disposed, during the not redemption. Registration, &c.

Copy of a Disposition and Conveyance of a Charter expedite upon the Procuratory in the Disposition before written.

BE it known to all men, by these presents, me A. B. of C.: Whereas the deceased W. Earl of by his disposition of date the day of years, sold, alienated, and disposed, to and in favour of F. G. and his heirs and assignees whatsoever, all and sundry the lands and barony of &c. excepting the lands and others therein excepted, redeemable, and under reversion, the said lands and others, from the said F. G. and his forefaids, by the said W. Earl of his heirs and assignees, at the term of in the year or at any other subsequent term of W. upon payment or consignation of L. money, in manner more fully specified in the said disposition; and upon which disposition, and procuratory of resignation therein contained, the said F. G. obtained charter under the great seal, in his favour, of the said lands and barony of redeemable in manner mentioned in the forefaid disposition in his favour; as the said charter, of date day of containing precept of feisin, more fully bears: And whereas the said F. G. with consent of the said W. Earl of did alienate and dispoise to H. J. of the superiority of certain parts and portions of the said lands and barony of therein particularly mentioned, and a proportion of the feu-duties and casualties corresponding thereto, payable for the whole barony of by K. L. of feu therein, redeemable, and under reversion, from the said H. J. by the said W. Earl of and his forefaids, upon payment

payment or confignation of the fum of
 as the proportional part corresponding to the superiority of the
 lands and others thereby difponed, of the forefaid fum of
 for which the superiority of the whole barony of
 is declared redeemable by the forefaid difpofition and charter in
 favour of the faid F. G. and by which difpofition the faid F. G.
 affigned and transferred to the faid H. J. and his forefaids, the
 charter under the great feal in his favour, above narrated, and
 unexecute precept of feifin therein contained; as the faid difpofi-
 tion, containing fundry other claufes, of date
 more fully bears; upon which difpofition and precept of feifin con-
 tained in the faid charter, then unexecuted, the faid H. J. was in-
 feft and feifed in the faid parts and portions of the barony of
 upon the and his feifin recorded in

the general register the and faid year: And
 whereas the faid H. J. in confideration of my having instantly ad-
 vanced and paid to him the forefaid fum of
 as the proportional part of the forefaid fum corresponding to the
 lands and others hereby difponed, did fell, alienate, and difpone, to
 me, my heirs and affignees whatfoever, all and whole the faid parts
 and portions of the barony of contained in the
 forefaid difpofition, by the faid F. G. to the faid H. J. heritably,
 but redeemable, and under reverfion, in manner mentioned in the
 faid difpofition of the faid lands in favour of the faid H. J. as the
 faid difpofition, of date more fully bears; and upon
 which difpofition, and procuratory of refignation therein contain-
 ed, I obtained a charter of refignation under the feal appointed
 by the treaty of union to be kept and ufed in Scotland in place of
 the great feal formerly ufed there, of the lands and others contain-
 ed in the faid difpofition in my favour, and of certain other lands
 therein mentioned; which charter is dated at Edinburgh the

And now feeing that G. G. has instantly
 made payment to me of the fum of
 wit ye me to have fold and difponed, likeas I hereby fell and dif-
 pone, to the faid his heirs and affignees whatever, heritably,
 but under reverfion, in manner after mentioned, all and whole
 the following parts and portions of the lands and barony of

viz.

redeemable always, and under reverfion,

B

the

the said parts and portions of the barony of from the said
G. G. and his forefaids, by the said deceased W. Earl of

his heirs or assignees, in manner mentioned in the original
disposition granted by the said W. Earl of to the said
F. G. above narrated, and the clause of redemption contained in
the said disposition is herein held as repeated *brevitatis causa* :
And I hereby bind and oblige me, my heirs and successors, upon
our own proper charges, to infeft and seise the said G. G. and
his forefaids, in the said lands, fishings, and others, above dis-
poned, under the reservation before written, to be holden from us,
and our forefaids, of our immediate lawful superiors of the same,
in like manner, and as freely, in all respects, as we held, or
might have held the same ; and for that effect, I hereby assign
and transfer to the said G. G. and his forefaids, the whole writs
and evidents of and concerning the forefaid lands and others ;
and particularly, without prejudice to the forefaid generality, the
forefaid charter of resignation, in my favour, of the said lands
and others above disposed, and of certain other lands therein
mentioned, with the precept of feisin therein, still unexecuted ;
and that allenary, in so far as concerns the lands and others a-
bove disposed, and no farther ; with full power to the said G. G.
and his forefaids, to obtain themselves duly infeft and seised in
the lands and others above disposed, in virtue of the precept of
feisin contained in the forefaid charter, and this present convey-
ance thereto ; which disposition, with the lands and others above
disposed, and infeftments to follow hereon, under the reservation
before written, I bind and oblige me, and my forefaids, to war-
rant to the said G. G. and his forefaids, from our own proper
fact and deed, done or to be done, in prejudice hereof, allenary :
Excepting always from this present disposition of the said lands
and others, and warrandice thereof, above mentioned, all feu-
charters, and other infeftments of property of the said lands and
others, granted by the said W. Earl of to K. L. of
or any others, feuers and vassals therein ; and under which ex-
ception the forefaid disposition first above narrated was granted
by the said W. Earl of to the said F. G. ; and further
I hereby assign and dispone, to and in favour of the said G. G.
and his forefaids, the sum of L. as the feu-duty here-
by agreed and fixed to be paid to the said by the
said

faid G. G. and his foresaids therein, as the proportional part of the sum of being the feu-duty due for the lands above disposed, together with the lands of which are not hereby disposed, and other customs and casualties whatsoever, due and payable forth of the foresaid lands and others from and after the term of next, during the not redemption; and I bind and oblige me and my foresaids to warrant the above assignation from my own facts and deeds allenary. Consenting to the registration, &c.

Copy of a Disposition and Assignation, A. B. to C. D.

BE it known to all men by these presents, me A. B. Whereas J. B. in consideration that I had advanced and paid to him the sum of L. by his disposition, of date the day of fold, alienated, and disposed, to me, my heirs, and assignees whatsoever, all and whole the lands and others therein mentioned; and, particularly, all and whole the lands and others hereafter disposed; redeemable always, and under reversion, from me or my foresaids, by the said C. D. his heirs and successors, upon payment to me of the said sum of L. at the term of in manner more fully mentioned in the said disposition; and by which disposition the said C. D. bound and obliged him, his heirs and successors, duly and validly to invest and seise me and my foresaids, to be held of his immediate lawful superiors of the same; and for that effect he assigned and disposed to me and my foresaids, heritably, but under reversion as aforesaid, a charter under the seal appointed by the treaty of Union to be kept and used in Scotland in place of the great seal formerly used there, in his favours, of the lands and others thereby disposed, and of certain other lands therein mentioned, and that allenary in so far as concerned the lands and others thereby disposed, and no further; which charter is dated the day of And now seeing that C. D. has instantly advanced and paid to me the sum of L. as the sum hereby agreed to correspond to the lands and others hereafter disposed, of the foresaid sum of for which the whole lands and others contained in the disposition above narrated

narrated in my favour, are declared to be redeemable: Therefore wit ye me to have sold, alienated, and disposed, to and in favour of the said C. D. his heirs or assignees whatsoever, heritably, but under reversion, in manner after mentioned, all and whole, &c. redeemable always, and under reversion, the said lands and others above disposed, from the said C. D. or his forefairs, by the said J. B. his heirs and successors, at the term of or at any other term of thereafter, by payment-making to the said C. D. and his forefairs, of the said sum of upon forty days premonition, to be given by the said J. B. or his forefairs, to the said C. D. or his forefairs, personally, or at their dwelling-houses, by a notary-public and witnesses; and that an instrument, under the hands of a notary-public, shall be holden legal and sufficient evidence thereof: And I hereby bind and oblige me, my heirs and successors, duly and validly to invest and seise the said C. D. and his forefairs, in the lands and others above disposed, under the reversion above written; and for that effect, I hereby assign and transfer to the said C. D. and his forefairs, the foresaid charter of resignation in favour of the said J. B. as also the disposition thereof by the said J. B. in my favour, above narrated; and that allennarly, in so far as concerns the lands and others above disposed, and no further; with full power to the said C. D. and his forefairs, to obtain themselves duly and lawfully invest and seised in the lands and others above disposed, in virtue of the said charter, and precept of seisin therein contained, still unexecuted, and this present conveyance thereto; which disposition of the lands and others above disposed, with the investment to follow thereupon, under the reversion before written, I bind and oblige me, my heirs and successors, to warrant to be good and sufficient to the said C. D. and his forefairs, from my own proper fact and deed, done or to be done in prejudice hereof allennarly: Excepting always from the disposition of the lands and others above mentioned, and from the warrandice thereof, the feu-charter and investment of property of the said lands and others standing in the person of G. H. without prejudice to the said C. D. and his forefairs to quarrel the said feu-rights, upon any grounds of law that will not infer warrandice against the said J. B. granter of the said feu, or against me: And further, I hereby make and constitute

constitute the said C. D. and his forefaids, my cessioners and assignees, not only to the whole writs and evidents of the lands and others above disposed, but also in and to the whole feu-duties, rents, profits, and casualties, of the said lands and others above disposed, from and after the term of _____ and in all time coming thereafter, during the not redemption: And in regard the whole lands of _____ whereof the lands and others above disposed are a part, are held feu of and under me by the said G. H. for payment of the sum of _____ therefore it is hereby agreed, that the said C. D. shall be intitled to the sum of _____ of the said feu-duty, for the lands above disposed; and the remainder of the said _____ to be paid to me, my heirs and successors, for the part of the lands still retained by me, and which are not hereby disposed. Registration, &c.

Copy of a Disposition, or Wadset-right, granted in Mid-Lothian, and upon which a Charter was expedite by Mr Stuart of Torrence, Writer to the Signet.

BE it known, &c. me Hew Dalrymple of Fordell, Esq; superior of the lands and others underwritten: Whereas John Dalrymple, Esq; younger of Coussland, Advocate, has made payment to me of the sum of L. 20 Sterling, for my granting the right and disposition after mentioned, whereof I hereby grant the receipt, renouncing all exceptions and objections to the contrary: Therefore wit ye me to have sold, annailzied, and dispoed, as I, by these presents, sell, annailzie, and dispoed, to and in favour of the said Mr John Dalrymple, his heirs and assignees, heritably, (but redeemable always, and under reversion, in manner after mentioned); all and hail these parts and portions of the barony of Fordell following, viz. the lands of Coats, as presently possessed by James Brodie; the lands of Blackdog, as presently possessed by myself; with the teinds, parsonage and vicarage, thereof, lying within the lordship of Newbottle, and sheriffdom of Edinburgh; which lands was feued out by me to Mr David Dalrymple Advocate, for an yearly feu-duty of L. 30 Scots, by a disposition dated the 20th day of July current, together with all right, title, interest, and claim of right, which I, my predecessors and authors, had, have,

have, or any ways may have, claim, or pretend thereto; in the which lands, teinds, and others foresaid, I bind and oblige me, my heirs, and successors, to infest and seise the said John Dalrymple, and his foresaids, upon their own proper charges and expences, to be holden of our Sovereign Lord the King's Majesty, and his Highness's successors, in free blanch, for payment yearly, at the term of Whitsunday, of the sum of L. 18 Scots money, as a proportional part of L. 40 Scots money of blanch-duty payable yearly by me to his Majesty for the whole barony of Fordell, and that by resignation thereof; and for that effect, to make, grant, subscribe, and deliver, all writs requisite and necessary. And for effectuating the said infestment by resignation, wit ye me to have made and constitute, as I by these presents make, constitute, and appoint

and each of them, conjunctly and severally, my very lawful and irrevocable procurators to the effect under written; giving, granting, and committing, to them, my full power and commission to resign, surrender, up-give, overgive, and deliver, all and haill these parts and portions of the barony of Fordell following, viz. the said lands of Coats, as presently possessed by James Brodie; the said lands of Blackdog, as presently possessed by myself; with the teinds, parsonage and vicarage, thereof, lying within the lordship of Newbottle, and sherrifdom of Edinburgh, which lands were feued out by me to the said Mr David Dalrymple, for the said feu-duty of L. 30 Scots, by a disposition, dated the said 20th day of July current, together with all right, title, and interest, which I, my predecessors and authors, had, have, or any wise may have, claim, or pretend thereto, in the hands of our Sovereign Lord the King's Majesty, and his Highness's successors, or of his commissioners, having power to receive resignations, and grant new infestments, in favour, and for new infestment of the same, to be made and granted to the said John Dalrymple, and his foresaids, heritably, but redeemable always, and under reversion, as follows, viz. Providing always, as it is hereby expressly agreed upon, That the lands and others above disposed shall be redeemable by me, my heirs and successors whatsoever, from the said John Dalrymple, and his foresaids, at the term of Whitsunday 1768, or at any other

ther term of Whitsunday thereafter, by payment-making to them, or consignment for their behoof, of the sum of L. 20 Sterling, upon premonition to be made to them forty days preceding the term of redemption, personally, or at their dwelling-places, in presence of a notar and witnesses, as effects; and in case of absence or refusal, the redemption-money to be consigned in the hands of the cashier of the Royal Bank, or treasurer of the Bank of Scotland, upon the peril of the consigner; and the place of redemption to be within St Giles's church in Edinburgh, at that place where the Earl of Moray's tomb is situated; and an extract of these presents, or of the investment to follow hereupon, shall be as good, valid, and sufficient, for using the order of redemption, as if a particular reversion were granted on a paper apart, with all solemnities necessary, acts, instruments, and documents hereupon, to take, ask, lift, and raise; and, generally, all and sundry other things requisite and necessary thereanent to do, use, and exercise, in the same manner, and as freely in all respects, as I might do herein if personally present, or which to the office of procuratory in such cases is known to appertain; all which I promise to hold firm and stable: and I bind and oblige me, and my forefairs, to warrant, acquit, and defend, the lands and others above disposed, with this present disposition, and investment to follow hereupon, to be free, safe, and sure, to the said J. D. and his forefairs, from all perils, dangers, burdens, and incumbrances whatsoever, at all hands, and against all deadly, as law will: Excepting always from the forefairs warrandice, the forefairs disposition made and granted by me, in favours of the said Mr David Dalrymple, whereby I disposed the lands and others forefairs, to be holden feu, for payment yearly of L. 30 Scots of feu-duty: and further, I, by these presents, not only assign, transfer, and dispose, to and in favours of the said J. D. and his forefairs, the whole writs, rights, titles, and securities of and concerning the lands and others above disposed; but also, the forefairs feu-duty, and other casualties of superiority, payable forth of the said lands by the said Mr David Dalrymple, from and after the term of Whitsunday last past, and in all time coming, during the not-redemption aforesaid; turning and transferring the whole right of the premises, from me, and my forefairs, to and in favours of the said J. D. and his forefairs, whom

I hereby surrogate and substitute in my full right and place of the premisses, empowering them to uplift and receive the said feu-duty, to grant receipts and discharges thereof, and, if there is occasion, call, charge, and pursue therefor; and, generally, to do every other thing thereanent which I could have done myself before granting hereof: which assignation, I bind and oblige me, and my forefairs, to warrant as follows, viz. in so far as concerns the writs and evidences, at all hands, and against all deadly, as law will; and in so far as concerns the said feu-duty, from my own proper fact and deed, done or to be done, in hurt and prejudice hereof allenary: and I bind and oblige me, and my forefairs, to make forthcoming to the said J. D. and his forefairs, the writs and titles of the said lands, whenever they have necessary use for the same, upon their receipt, and obligation for redelivery thereof. Registration, &c.—*Signed at Edinburgh, 27th July 1758.*



N.B.M.
part 3 foregoing?

Disposition, James Wemyfs, Esq; of Wemyfs, to
Hugh Dalrymple, Esq;

I James Wemyfs of Wemyfs, Esq; superior of the lands and others under-written : Whereas Hugh Dalrymple of Fordell, Esq; has made payment to me of the sum of L. 20 Sterling, for my granting these presents, whereof I hereby grant the receipt, renouncing all exceptions and objections in the contrary ; therefore wit ye me to have sold, annailzied, and disponed, as I, by these presents sell, annailzie, and dispone, to and in favours of the said Hugh Dalrymple, his heirs and assignees, heritably, but redeemable always, and under reversion, in manner after-mentioned, all and haill the lands of Powguild and Glenningstone, with the haill parts, pendicles, and pertinents thereof, tenants, tenantries, and service of free tenants of the same, all lying in the parish of _____ and shire of Fife, as the same are more particularly described in the rights and infeftments thereof, with all right, title, interest, and claim of right, which I, my predecessors, or authors, had, have, or any wise may have, claim, or pretend thereto, or any part thereof, in time coming : In the which lands I bind and oblige me to infeft and seise the said Hugh Dalrymple, and his forefaids, upon their own proper charges and expences, to be holden of our Sovereign Lord the King's Majesty, and his royal successors, in free blanch, for yearly payment of the blanch-duties, and other duties, formerly payable by me for the said lands, and that by resignation thereof ; and for that effect to make, grant, subscribe, and deliver, all writs requisite and necessary : And for effectuating the said infeftment by resignation, wit ye me to have made and constitute, as I, by these presents, make, constitute, and appoint

and each of you, conjunctly and severally, my very lawful and undoubted procurators, to the effect underwritten ; giving, granting, and committing, to them, my full power and commission, to resign, surrender, upgive, overgive, and deliver, all and haill the said lands of Powguild and Glenningstone, with the haill parts, pendicles, and pertinents thereof, lying as aforesaid ; together with all right, title, interest, and claim of right, which I, my predecessors, or authors, had,
A _____ have,

have, or any wife may have to the said lands, or any part thereof, in the hands of our Sovereign Lord the King's Majesty, and his Highness's successors, or of his commissioners having power to receive resignations, and grant new infeftments thereupon, in favours, and for new infeftment of the same, to be made and granted to the said Hugh Dalrymple, and his forefairs, heritably, but redeemable always, and under reversion, as follows, viz. Providing always, as it is hereby expressly agreed upon, That the lands and others above disposed shall be redeemable, by me, my heirs and successors, from the said Hugh Dalrymple and his forefairs, at the term of Whitsunday 1770 years, or at any other term of Whitsunday thereafter, by payment-making to them, or consignation for their behoof, of the sum of L. 20 Sterling, upon premonition to be made to them forty days preceding the term of redemption, personally, or at their dwelling-places, in presence of a notary and witnesses, as effects; and in case of absence or refusal, the redemption-money to be consigned in the hands of the cashier of the Royal Bank, or treasurer of the Bank of Scotland, upon the peril of the consigner; and the place of redemption to be within St Giles's church, at that place where the Earl of Moray's tomb is situated; and an extract of these presents, or of the infeftment to follow hereupon, shall be as good, valid, and sufficient, for using the order of redemption, as if a particular reversion were granted on a paper apart, with all solemnities necessary; acts, instruments, and documents, one or more, in the premises, to ask, lift, and raise; and, generally, to do every other thing thereanent which I could do myself, if personally present, or which to the office of procurator in such cases is known to appertain, promising to hold firm and stable whatsoever my said procurator does, or lawfully causes to be done in the premises; and I bind and oblige me to warrant, acquit, and defend, the lands and others above disposed, with this present disposition, and infeftment to follow thereupon, to be free, safe, and sure, to the said Hugh Dalrymple, and his forefairs, from all perils, dangers, and incumbrances whatsoever, at all hands, and against all deadly, as law will; excepting always from the foresaid warrandice the feu-rights and dispositions of the property of the foresaid lands granted by me, my predecessors or authors: And further, I by these presents, not only assign, transfer, and dispone, to the said Hugh Dalrymple, and his forefairs, the whole writs, rights, titles, and securities, of and concerning



cerning the lands and others above disposed; but also the feu-duties and other casualties of superiority; payable forth of the said lands, from and after the term of Whitsunday next to come, and in all time coming during the not redemption, as aforesaid; turning and transferring the whole right of the premises, from me and my foresaids, to and in favour of the said Hugh Dalrymple, and his foresaids, whom I hereby surrogate and substitute in my full right and place thereof; empowering them to uplift and receive the said feu-duties, to grant receipts, discharges, and conveyances of the same, and, generally, to do every thing thereanent which I could have done myself, before granting hereof; which assignation I bind and oblige me to warrant as follows, viz. in so far as concerns the writs and evidents, at all hands, and against all deadly, as law will; and in so far as concerns the said feu-duties, from my own proper fact and deed allenarly, done or to be done by me, in hurt and prejudice hereof: And I have herewith delivered up to the said Hugh Dalrymple the following writs, viz. Extract disposition of the lands above disposed, by the deceased James Earl of Wemyss, in my favour, therein designed his third lawful son, dated the 13th day of July, and registrated in the books of session the 17th day of August, 1754 years; Charter under the great seal, and instrument of resignation thereon, both in my favours, dated the 6th of August, and year last mentioned, and instrument of seisin following upon the said charter in my favour, dated the 15th, and registrate in the general register of seisions kept at Edinburgh, the 20th day of August, and year also last mentioned; all to be kept and used by the said Hugh Dalrymple and his foresaids, as their own proper writs, in all time coming. And I consent to the registration hereof in the books of council and session, or any other judges books competent, therein to remain for preservation; and thereto I constitute

my procurators. In witness whereof, these presents are wrote upon this and the three preceeding pages of stamped paper, by Francis Strachan, clerk to David Anderson writer to the signet, and subscribed by me, at Wemyss-house, the 6th day of May 1766 years, before these witnesses, William Murdoch and George Aedie, both my servants.

JAS WEMYSS.

Will. Murdoch witness.

George Aedie witness.

State

Disposition, Sir Robert Munro of Fowlis, to George Munro of Culcairn, his second lawful son, 24th May 1708.

BE it kend till all men, be thir presents, me Sir Robert Munro of Fowlis, Knight and Baronet, heritable proprietor of the lands and others under written, *for certain onerous causes and considerations moving me*, to have sold, annailzied, and disposed, like-as I, be thir presents, sell, annailzie, and dispone, to and in favours of George Munro of Culcairn, my second lawful son, his airs-male and assignies whatsoever, all and haill the lands of Contulich, Over and Nether, with the Fortar of Ardoch and Auchavaich, with the pertinents, all lyand within the parochine of Alnes, and barony of Fowlis, and sheriffdom of Ross, heritably, and under reversion, in manner after expressed; and bind and oblige me, my airs and successors, with all convenient diligence, to duly and lawfully infest and saise the said George Munro, my second lawful son, and his foresaids, heritably, and under reversion, in the foresaid lands of Contulich, and pertinents above specified, by two several infestments, in due and competent form; the one of the said infestments to be holden of me and my airs-male in free blanch, for payment-making of one penny Scots money upon the ground of the said lands, at the feast and term of Whitsunday yearly, if the same beis asked allenarly; and the other of the said infestments to be holden frae me and my foresaids, of my immediate lawful superiors of the samen, for payment-making to them of the duties, services, and casualties, contained in mine and my predecessors rights and evidents of the samen, sicklike and as freely in all respects as I hold the samen myself; and that either by resignation or confirmation, as best shall please my said son: And for expeding the said infestment by resignation, I the said Sir Robert Munro constitutes

and ilk ane of you, conjunctly and severally, my procurators for me, and in my name; giving, granting, and committing to you, and ilk ane of you, conjunctly and severally, my full plain power, exprefs mandate, commission, and charge, for me, and in my name, to compear before my immediate lawful superiors of the
lands

lands and others above written, or their commissioners, having their power and commission to receive resignations, and granting infeftments thereupon, at and upon whatfomever day or days, place or places, lawful and convenient, with all humility and condign reverence, as becometh, purely and fimply, by ftaff and bafton, as ufe is, to resign, over-give, and deliver; likeas, by the tenor hereof, I the faid Sir Robert Munro resign, furrender, up-give, over-give, and deliver, (but with and under the condition of reverfion and others after expreffed), all and fundry the forefaid lands of Contulich, Over and Nether, Fortar of Ardoch and Auchavaich, with the pertinents, lyand as faid is, in the hands of my immediate lawful fuperiors thereof, or their commissioners, or others above fpecified, in favour and for new infeftments of the fame, to be made and granted to the faid George Munro my fon, and his airs-male and affignies whatfomever, heritably, and under reverfion, in manner after expreffed, in due and competent form, as accords; acts, instruments, and documents, to raife, ask, and lift, and, generally, all other things in the premisses that to the office of procuratory is known to appertain in fuch cafes to do, ufe, and exerce, ficklelike, and as freely in all refpects, as I or my forefaids might have done if perfonally prefent; promifing to hold firm and ftable whatever my faid procurators in the premisses lawfully does: both which infeftments fhall bear this claufe of warrandice following: Likeas I, be thir prefents, bind and oblige me and my forefaids, under the refervation under expreffed, to warrand, acquit, and defend the faid lands to be contained in the faid infeftments, and others above rehearfed, to my faid fon, and his above fpecified, at all hands, and againft all deadly, as law will; referving always furth and frae this warrandice any right made by my predeceffors and authors to the heritable tenants and fewers of the fame lands, and ficklelike with and under the condition and reverfion after expreffed: Likeas it is hereby expreffly declared, That the forefaid lands of Contulich, Upper and Nether, with the faid Fortar of Ardoch and Auchavaich, fhall be redeemable by me and my forefaids at any term of Whitfunday hereafter following, for payment or confignation of the fum of 1000 merks Scots money, fourty days before the forefaid term, in the hands of any of the magiftrates of the town of Taine, or any responsible perfon of the parifh of Alnes, if refused by my faid fon; to which effect, a double of this right, or an extract of the feafing to be ta-

ken hereupon, shall be a sufficient warrant for redeeming the farmen lands from my said son and his above specified: And sick-like I, be thir presents, make my son and his above specified my undoubted cessioners and assignies (during the not redemption foresaid) in and to the farms and duties payable furth to me of the said lands, and be thir presents assign and dispone to him, and his foresaids, the haill writs and evidents belonging to me of the foresaid lands, and shall make the same to be forthcoming to him and his foresaids whenever they have necessarily to do therewith, upon their obligation to deliver the same back to me upon demand. And consents thir presents be registrate in the books of council and session, or others competent, therein to remain for conservation; and to that effect constitutes

my procurators. Attour, to the effect the said George Munro, and his foresaids, may be infeft in the foresaid lands and others above specified, I the said Sir Robert Munro requires you

and ilk ane of you, conjunctly and severally, my bailies in that part, That, incontinent this my precept of sasine seen, ye pass to the grounds of the foresaid lands of Contulich, Over and Nether, and Fortar of Ardoch and Auchavaich, with their pertinents, and there give actual and heritable state and sasine, corporal and real possession of the foresaid lands of Contulich, Over and Nether, and Fortar above specified, with the pertinents, lyand as said is, to the said George Munro, or his actorny in his name, the bearer hereof, by deliverance to him of earth and stone of the ground of the said lands, as use is; redeemable alway, and under reversion, in manner above expressed: and this in no wise you will leave undone. The which to do we commit to you, conjunctly and severally, my full power, by thir presents. In witness whereof, I have subscribed thir presents (written by John Munro of Miltoun) with my hand, at Fowlis, the 24th day of May 1708 years, before these witnesses, John Munro in Newtown, and the said John Munro of Miltoun, writer foresaid.

R. MUNRO.

Jo. Munro witness.
John Munro witness.

Part

Part of the Minutes of election referred to in the foregoing Answers.

There was presented, and given in to the meeting, a claim for Hugh Dalrymple of Fordell, Esq; setting forth, That the claimant stands infest in the lands of Powguild and Glenningstone, with the parts and pendicles thereof, lying within the parish of Auchterderran, and shire of Fife; but redeemable from him by the Honourable James Wemyss of Wemyss, at Whitsunday 1777, or any term of Whitsunday thereafter, on payment or consignation of L. 20 Sterling, and held blanch by the claimant immediately of the crown, all conform to charter of resignation, under the union-seal, of the said lands, in the claimant's favour, dated the 3d day of July 1766 years, and to his seisin following thereupon, dated the 21st day of August 1766 years, and recorded in the general register of seissins, at Edinburgh, the 20th day of September thereafter.

To instruct that the claimant's title is a proper wadset, there is herewith produced the disposition of the said lands, by the said James Wemyss, in the claimant's favour, whereupon the said charter proceeds; and to instruct that the said lands are above L. 400 Scots of valued rent, there is produced a certificate, under the hands of the clerk, and two commissioners of supply, bearing, That the lands of Glenningstone stand valued in the cess-books at L. 309 Scots, and the lands of Powguild at L. 579 Scots.

Upon these titles Mr Dalrymple claims to be inrolled in the roll of freeholders for the shire of Fife, having right to vote at the election of a member of parliament. The said Hugh Dalrymple's titles referred to in the claim were also produced to the meeting.

It was objected to the said Hugh Dalrymple, That he formerly claimed to be inrolled in this county, and his qualification was found to be insufficient: That he was now again claiming upon the same title; and the only difference between his present claim and the former one is, that he now produces a disposition from

Mr

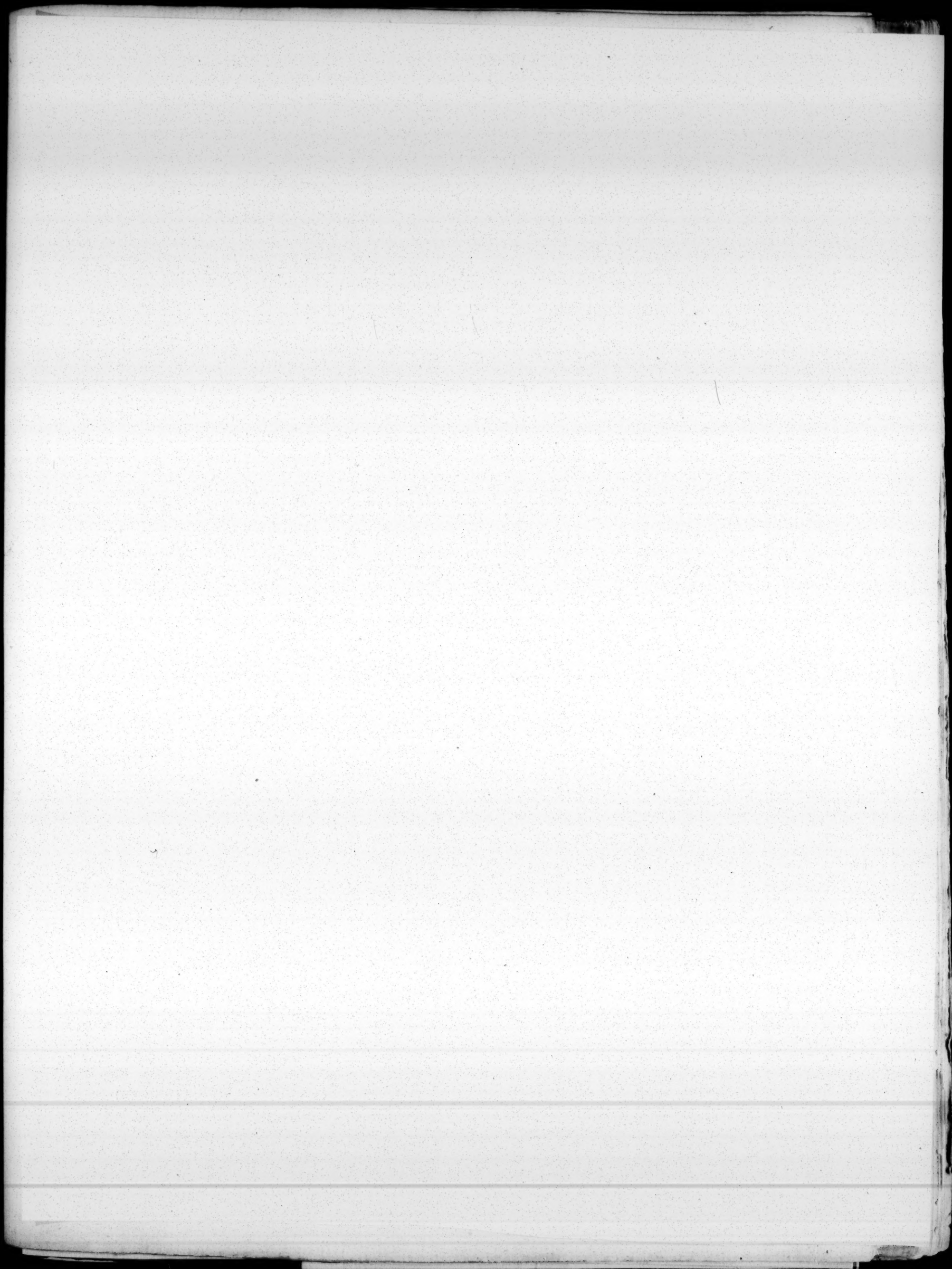
Mr Wemyss of Wemyss, as the ground of his charter. But this disposition will not aid him, because it appears to be redeemable, and at the same time is not a proper wadset, which is the only species of redeemable right that gives a vote. It has no resemblance to a wadset, in any of its clauses; and is only a sale under reversion, and therefore the claimant is not entitled to be inrolled.

To which objection it was answered, It is clear from the disposition by Mr Wemyss, that Captain Dalrymple is a proper wadsetter. It is not a disposition in security or relief of a debt which is reprobated by the act 1681; for in these cases the creditor must account for his intromissions. But here the claimant is not only intitled to draw the constant yearly profits of the lands, but also every casualty of superiority, how much soever they may exceed the sum, upon payment or consignation whereof the lands may be redeemed.

The meeting having heard and considered the said claim, and instructions thereof, objections and answers, and the roll being called, and votes marked, it carried, by sixty to fifty-eight, to inroll Captain Dalrymple; and the meeting ordered him to be inrolled accordingly, for the said lands of Powguild and Glenningston, being L. 888 Scots money of valued rent.

Then the said Hugh Dalrymple was qualified, by swearing the oath of allegiance, and signing the same, with the assurance, as the law directs; and the oath of trust and possession being put to him, he took and subscribed the same upon a roll of parchment.





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